CASE DIGESTS IN CONSTITUTIONAL LAW I

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APPENDICES

"The act of ratification is the act of voting [in the plebiscite] by the people. So that is the date of the ratification."

De Leon v. Esguerra
No. L-78059, 153 SCRA 602 [Aug 31, 1987]

Facts. De Leon was the incumbent Brgy. Captain of Brgy. Dolores, Tagaytay, Rizal whose term was to end in 1988 under the Brgy. Election Act of 1982. In memoranda signed on *February 8, 1987*, OIC Gov. *Esguerra* designated respondents as Brgy. Chairman and members of the Brgy. Council in place of De Leon et al. Esguerra relied on the Provisional Constitution which provided that "all elective officials xxx under the 1973 Constitution shall continue in office until designation xxx of their successors if such appointment is made *within one year from February 25, 1986*.

Issue. Was the designation of respondents to replace petitioners validly made within the one year period contemplated in the Provisional Constitution?

Held. No. Article XVIII, Sec 27 of the 1987 Constitution reads: "This Constitution shall take effect *immediately upon* its *ratification* by a majority of votes cast *in a plebiscite* held for the purpose and *shall supersede all previous Constitutions*." The 1987 Constitution was ratified in a plebiscite on February 2, 1987. By that date, therefore, the Provisional Constitution must have been superseded already. Having been rendered inoperative, Esguerra could no longer correctly rely on it when he designated the respondents on February 8, 1987.[1]

[1] Separate concurring opinion by *C.J.* Teehankee: The main issue is whether the 1987 Constitution took effect on February 2, 1987, the date that the plebiscite was held or on February 11, 1987, the date its ratification was proclaimed by Pres. Aquino. The record of proceedings shows that the clear intent of the Constitutional Commission in approving Art XVIII, Sec 27 was that "the act of ratification is the act of voting by the people. So that is the date of the ratification" and that "the canvass thereafter [of the votes] is merely the mathematical confirmation of what was done during the date of the plebiscite and the proclamation of the President is merely the official confirmatory declaration of an act which was actually done by the Filipino people in adopting the Constitution when they cast their votes on the date of the plebiscite." (*De Leon v. Esguerra*, 153 SCRA 602)

Impeachment proceedings are initiated by filing of a verified impeachment complaint

Francisco, Jr. v. House of Representatives, et al.
GR 160261, 415 SCRA 44 [Nov 10, 2003]

Facts. On 2 June 2003, Former Pres. Estrada filed an impeachment complaint against C.J. Davide, Jr., among others.[2] The House Committee on Justice voted to dismiss the complaint on 22 Oct 2003 for being insufficient in substance. *The Committee Report to that effect has not been sent to the House in plenary*.

The following day and just nearly 5 months since the filing of the first complaint, a second impeachment complaint[3] was filed by respondents house representatives.

Thus arose the instant petitions for certiorari, prohibition, and mandamus against the respondents *House of Representatives*, *et. al.,* (the House) most of which contend that the filing of the second impeachment complaint is unconstitutional as it violates Sec. 3(5), Art. XI of the Const. which provides: "No impeachment *proceedings* shall be *initiated* against the same official more than once within a period of one year."

The House argues: the one year bar could not have been violated as the first impeachment complaint has not been initiated. Sec. 3(1) of the same is clear in that it is the House, as a collective body, which has "the exclusive power to *initiate* all *cases* of impeachment." "Initiate" could not possibly mean "to file" because filing can, as Sec. 3 of the same provides, only be accomplished in 3 ways, to wit: (1) by a verified complaint for impeachment by any member of the House; or (2) by any citizen upon a resolution of endorsement by any member; or (3) by at least 1/3 of all the

[2] On the ground of culpable violation of the Constitution, betrayal of the public trust and other high crimes.

[3] On the ground of the alleged results of the legislative inquiry conducted on the manner of disbursements and expenditures by C.J. Davide, Jr. of the Judiciary Development Fund.

members of the House.[4] Since the House, as a collective body, has yet to act on the first impeachment complaint, the first complaint could not have been "initiated".

Issue. Is the second impeachment complaint barred under Section 3(5) of Art. XI of the Const.?

Held. Yes. The deliberations of the Constitutional Commission clearly revealed that the framers intended *"initiation" to start with the filing of the complaint.*[5] The vote of one-third of the House in a resolution of impeachment does not initiate the impeachment proceedings which was already initiated by the filing of a verified complaint. [*Thus, under the one year bar on initiating impeachment proceedings,*] *no second verified complaint may be accepted and referred to the Committee on Justice for action [within one year from filing of the first verified impeachment complaint].*

To the argument that only the House as a body can initiate impeachment proceedings because Sec. 3(1) of Art. XI of the Const. says "The House x x x shall have the exclusive power to initiate all *cases* of impeachment," this is a misreading and is contrary to the principle of *reddendo singula singulis* by equating "impeachment cases" with "impeachment proceeding."[6,7]

Constitutional amendments may be submitted to the people for ratification simultaneously with the general elections.

Gonzales v. COMELEC

No. L-28196, 21 SCRA 774 [Nov 9, 1967]

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[4] Const., Art. XI, Sec. 3:

x x x x x x x x x

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof x x x

(3) A vote of at least one-third of all the Members of the House shall be necessary to either affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. x x x

x x x x x x x x x

[5] The well-settled *principles of constitutional construction*:

First, *verba legis*, that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed.

Second, where there is ambiguity, ratio *legis est anima*. The words of the Constitution should be interpreted in accordance with the intent of its framers. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose. It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers.

Finally, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together. *(Francisco, Jr. v. House of Representatives, et al.,* G.R. No. 160261 [2003])

[6] Following the principle of *reddendo singula singulis*, the term "cases" must be distinguished from the term "proceedings." An impeachment *case* is the legal controversy that must be decided by the Senate. Under Sec.3(3), Art. XI, the House, by a vote of one-third of all its members, can bring a case to the Senate. It is in that sense that the House has "exclusive power" to initiate all *cases* of impeachment. On the other hand, the impeachment *proceeding* is not initiated when the complaint is transmitted to the Senate for trial because that is the end of the House proceeding and the beginning of another proceeding, namely the trial. (*Ibid.*)

[7] There was a preliminary issue on whether the power of judicial review extends to those arising from impeachment proceedings. The Court ruled in the affirmative. Our Constitution, though vesting in the House of Reps the exclusive power to initiate impeachment cases, provides for several limitations to the exercise of such power: the manner of filing, required vote to impeach, and the one year bar on the impeachment of one and the same official (Art. XI, Secs. 3 (2), (3), (4) and (5)). Where there are constitutionally imposed limits on powers or functions conferred upon political bodies, our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits pursuant to its *expanded certiorari jurisdiction* under Art. VIII, Sec. 1**:** the power to correct any grave abuse of discretion on the part of any government branch or instrumentality. (*Id.*)

N.B. There are *two types of political questions*: (1) justiciable and (2) non-justiciable. The determination of one from the other lies in the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. (*Id.*)

Facts. Congress passed three resolutions simultaneously on the same date proposing amendments to the Constitution:

(1) RBH[8] No. 1: to increase the maximum number of seats in the House of Representatives from 120 to 180;
(2) RBH No. 2: calling a Constitutional Convention to be held on Nov 1971; and
(3) RBH No. 3: to authorize members of Congress to run for delegates to the Constitutional Convention and if elected thereto, to authorize them to be delegates without forfeiting their seats in Congress.

Upon approval by the President, the bill became RA 4913, which provided that RBH No. 1 and No. 3 be submitted for the ratification of the people at the general elections on Nov 14, 1967.

Issue. May Constitutional amendments be submitted for ratification in a general election?

Held. Yes. 1935 Constitution, Art XV, Sec 1 provides: "xxx [Constitutional] amendments shall be valid xxx when approved by a majority of the votes cast at *an election*[9] at which the amendments are submitted to the people for their ratification." There is nothing in the provision to indicate that the "election" therein referred to is a "special" election and not a general election. There is no denying the fact that an adequate appraisal of the merits and demerits of the proposed amendments is likely to be overshadowed by the great attention usually commanded by the choice of personalities involved in general elections. But then, these considerations are addressed to the wisdom of holding a plebiscite simultaneously with the election of public officers. [Though admirable, we] are unable to subscribe to the contrary view without, in effect, reading into the Constitution what is not written thereon and what cannot fairly be deduced from the letter thereof, since the spirit of the law should not be a matter of sheer speculation.

The plenary authority of Congress to call a constitutional convention includes, by necessary implication, all other powers essential to the effective exercise of such principal power. Implementing details may be provided by Congress as a constituent assembly or as a legislative body.

Imbong v. COMELEC

No. L-32432, 35 SCRA 28 [Sept 11, 1970]

Facts. Congress, acting as a Constituent Assembly passed resolution No. 2 which, among others, called for a Constitutional Convention to be composed of two delegates from each representative district who shall have the same qualifications as those of Congressmen, to be elected on the second Tuesday of November, 1970 in accordance with the Revised Election Code. Congress then as a legislative assembly enacted RA 4914 implementing Resolution No. 2. Subsequently, Congress as a Constitutional Assembly passed Resolution No. 4 which amended Resolution No. 2 and provided more details on the qualifications and apportionment of the delegates but provided that other details are to be embodied in an implementing legislation. Congress acting as a legislative assembly thus enacted RA 6132, implementing Resolution Nos. 2 and 4, and expressly repealing RA 4914. Petitioners now assail the validity of RA 6132.

Issue. May Congress, acting as a legislative assembly, enact RA 6132 to implement a resolution passed by the same body acting as a Constituent Assembly?

Held. Yes. The grant to Congress as a Constituent Assembly of such plenary authority to call a constitutional convention includes, by virtue of the doctrine of necessary implication, all other powers essential to the effective exercise of the principal power granted, such as the power to fix the qualifications, number, apportionment, and compensation of the delegates as well as appropriation of funds, and other implementing details indispensable to the convention. While the authority to call a constitutional convention is vested by the Constitution solely and exclusively in Congress acting as a Constituent Assembly, the power to enact the implementing details, does not exclusively pertain to Congress acting as a Constituent Assembly. Such implementing details are matters within the competence of Congress in the exercise of its comprehensive legislative power, which power encompasses all matters not expressly or by necessary implication removed by the Constitution from the ambit of legislative action. Consequently, when Congress, acting as a Constituent Assembly, omits to provide for such implementing details after calling a

[8] RBH: Resolution of Both Houses

[9] 1987 Constitution now uses the term "plebiscite" (Art XVII, Sec 4)

constitutional convention, Congress, acting as a legislative body, can enact the necessary implementing legislation to fill in the gaps.[10]

A constituent body can propose anything but conclude nothing.

Occeña v. COMELEC

No. L-56350, 104 SCRA 1 [Apr 2, 1981]

Facts. Upon the call of President-Prime Minister F. Marcos, the Interim Batasang Pambansa convened as a constituent assembly. Acting as such, it passed 3 resolutions[11] proposing amendments to the Constitution. *Occeña* et al. challenged the validity of these proposals, attacking the validity of the 1973 Constitution itself and the validity of the power of the Int. Batasang Pambansa to propose such amendments.

Issues.

(1) Is the 1973 Constitution the fundamental law?
(2) Does the Int. Batasang Pambansa have the authority to propose amendments to the Constitution?
(3) Did the Interim Batasang Pambansa exceed its authority by allegedly proposing revisions and not merely amendments?
(4) Are the proposals invalid because the allegedly required three-fourths vote was not complied with?
(5) Were the proposals properly submitted to the people for ratification?

Held.

(1) Yes. It is much too late in the day to deny the force and applicability of the 1973 Constitution. The ruling in *Javellana v. Exec. Secretary* is authoritative as to the effectivity of the 1973 Constitution whose provisions have been applied in several cases already.

(2) Yes. By express provision of the 1976 Constitutional amendments, the Int. Batasang Pambansa has the same powers as the Int. National Assembly.[12] And in Art XVII, Sec 15 of the 1973 Const., the Int. National Assembly was vested with the power to propose amendments by special call of the Prime Minister by a vote of a majority of all its members. When, therefore, the Int. Batasang Pambansa, upon the call of President-Prime Minister F. Marcos, met as a constituent assembly, it acted by virtue of such competence.

(3) No. *A constituent body can propose anything but conclude nothing.* Thus, whether [the Int. Batasang Pambansa acting as a constituent assembly] will only propose amendments to the Constitution or entirely overhaul the present Constitution xxx is of no moment because the same will be submitted to the people for ratification.

(4) No. When the Int. Batasang Pambansa is sitting as a constituent assembly, only a majority vote is needed to propose amendments. A three-fourths vote is not required in a Constitutional Convention. It is not a requirement either when, in this case, the Int. Batasang Pambansa exercises its constituent power to propose amendments. Moreover, even on the presumption that the requirement of three-fourths vote applies, such extraordinary majority was obtained. Where then is the alleged infirmity?

(5) Yes. Art XVI, Sec 2 of the 1973 Const. provides that the plebiscite called for the ratification of the amendments shall be held not later than 3 months after the approval of such amendment or revision. The resolutions were approved on Feb 5 and 27, 1981 and the plebiscite is set on April 7, 1981. It is thus within the 90-day required period. As for the people being adequately informed, it cannot be denied that by this time the proposed amendments have been intensively and extensively discussed at the Int. Batasang Pambansa, as well as through the mass media, [so that] it cannot be said that our people are unaware.

[10] The fact that a bill providing for such implementing details may be vetoed by the President is no argument against conceding such power [to provide implementing details of a constitutional convention through legislation] in Congress as a legislative body for it is not irremediable as Congress can override the Presidential veto or Congress can reconvene as a Constituent Assembly and adopt a resolution prescribing the required implementing details. (*Imbong v. COMELEC*, 35 SCRA 28)

[11] Resolution No. 1 proposed the allowing of a natural-born citizen of the Philippines naturalized in a foreign country to own a limited area of land for residential purposes. Resolution No. 2 dealt with the Presidency, the Prime Minister and the Cabinet, and the National Assembly. Resolution No. 3 dealt on the amendment to the Article on COMELEC

[12] Amendment 2: "The interim Batasang Pambansa shall have the same powers and its Members shall have the same functions, responsibilities, rights, privileges, and disqualifications as the interim National Assembly and the regular National Assembly and the Members thereof." (*N.B*. The int. Batasang Pambansa was created in lieu of the int. National Assembly – Amendment 1)

There must be only ONE plebiscite for the ratification of Constitutional amendments proposed by ONE constituent body for there to be proper submission.

Tolentino v. COMELEC
No. L-34150, 41 SCRA 702 [Oct 16, 1971]

Facts. The first Organic Resolution approved by the 1971 Constitutional Convention proposed to reduce the voting age from 21 to 18 years of age. It was also provided therein that the plebiscite to ratify such partial amendment shall coincide with the local elections in November 1971 and shall be without prejudice to other amendments that will be proposed in the future by the same Convention. Petitioners now seek to restrain *COMELEC* on acting on such resolution.

Issue. May amendments to the Constitution be submitted to the electorate for ratification partially without prejudice to future amendments that may be proposed by the Constitutional Convention?

Held. No. Art XV, Sec 1 of the 1935 Const. clearly provides that "such amendments shall be valid as part of the Constitution when approved by a majority of the votes cast at *an election* at which the amendments are submitted to the people for ratification", thus leaving no room for doubt as to how many "elections" or plebiscites may be held to ratify any amendment/s proposed by the same Convention. The provision unequivocally says "an election" which means only one. In order that the plebiscite xxx may be validly held, it must provide the voter not only sufficient time but ample basis for an intelligent appraisal of the nature of the amendment per se as well as its relation to the other parts with which it has to form a harmonious whole. In the case at bar, the Convention has hardly started considering the merits of the proposals. To present to the people any single proposal cannot comply with this requirement. There is here "no proper submission".

Political questions are associated with the wisdom and not the legality of an act.

"[A constitutional amendment] proposed today has relation to the sentiment and felt needs today, and that, if not ratified early while the sentiment may fairly be supposed to exist, it ought to be regarded as waived…"

Sanidad v. COMELEC
No. L-44640, 73 SCA 333 [Oct 12, 1976]

Facts. In 1976, Pres. Marcos submitted to the people in a referendum-plebiscite two questions:

"(1) Do you want martial law to be continued?;

"(2) Whether or not you want martial law to be continued, do you approve the following amendments to the Constitution? xxx"

Petitioners now seek to declare void the presidential decrees which submitted the aforementioned issues to the people in a plebiscite-referendum. They aver that the incumbent President has no constitutional grant of constituent power to propose amendments to the Constitution; consequently, the referendum-plebiscite has no legal basis. They now seek to enjoin *COMELEC* from holding such plebiscite.

Issues.

(1) Is the nature of the question on the constitutionality of the assailed presidential decrees political or justiciable?

(2) Does the President possess the power to propose amendments to the Constitution as well as set up the required machinery and prescribe the procedure for the ratification of his proposals by the people?

(3) Is the submission to the people of the proposed amendments sufficient and proper?

Held.

(1) The question is *justiciable*. The constitutional amending in this case is in the form of a delegated and hence a limited power so that the SC is vested with that authority to determine whether that power has been discharged within its limits. *Political questions* are neatly *associated with the wisdom, not the legality* of a particular act. [In the case at bar,] what is in the heels of the Court is not the wisdom but the Constitutional authority of the President to perform such acts or to assume the power of a constituent assembly. If the Constitution provides how it may be amended, the Judiciary as the interpreter of that Constitution, can declare whether the procedure followed or the authority assumed was valid or not.

(2) Yes. In abnormal times,[13] the separation of powers may form an insurmountable barrier to a decisive emergency action xxx. The power of the State in crisis xxx must be freed from the normal system of constitutional and legal limitations so that the crisis may be ended and normal times restored. The presidential exercise of legislative powers in times of martial law is now a conceded valid act.[14] There is, thus, no reason why the President cannot discharge validly the function of the Int. Assembly to propose amendments to the Constitution, which is but adjunct to its gross legislative power. For the President to decline to undertake the amending process, in the absence of the Int. Assembly, would leave a governmental machinery at a stalemate, thereby impeding the objective of a crisis govt "to end the crises and restore normal times".

(3) Yes. Three weeks (period from the issuance of presidential decrees to referendum-plebiscite) is not too short for free debates and discussions. The questions are not new. They are issues of the day. All that the 1973 Constitution provides is that the plebiscite "xxx shall be held not later than 3 months after approval of such amendment xxx".[15] Citing Jameson: "*An alteration of the Constitution proposed today has relation to the sentiment and felt needs today, and that, if not ratified early while the sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed*."

RA 6735 is incomplete, inadequate and wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned.

Santiago v. COMELEC
GR 127325, 270 SCRA 106 [Mar 19, 1997]

Facts. Delfin filed with *COMELEC* a petition to amend the Constitution by people's initiative. He proposed to lift the term limits of elective officials. COMELEC acted on the petition. *Santiago* et al. now petitions to prohibit COMELEC from further acting on the petition. They aver that the constitutional provision on people's initiative (Art XVII, Sec 2) has no implementing law yet[16] notwithstanding RA 6735, and that COMELEC Resolution No. 2300, insofar as it seeks to govern the conduct of initiative on the amendments to the Constitution, is *ultra vires*.

Issues.

(1) Is RA 6735 (The Initiative and Referendum Act) a sufficient statutory implementation of Art XVII, Sec 2 of the Constitution?

(2) May COMELEC validly take cognizance of the Delfin Petition?

Held.

(1) No. *RA 6735 is incomplete, inadequate and wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned*. The inclusion of the word "Constitution" in Sec 2 of RA 6735 (section on the "Statement and Policy") was a delayed

[13] There are *two periods contemplated in the Constitutional life of a nation*: (1) the period of normalcy, and (2) the period of transition (abnormal times). xxx In times of transition, amendments maybe proposed by a majority vote of all the members of the Int. National Assembly upon special call by the Int. Prime Minister (Art XVII, Sec 15, 1973 Const.) (*Sanidad v. COMELEC*, 73 SCA 333)

[14] 1973 Const., Art XVII, Sec 3:

> "(1) The incumbent President xxx shall initially convene the int. National Assembly and shall preside over its sessions until the int. Speaker shall have been elected. He shall continue to exercise his powers and prerogatives under the 1935 Const. and the powers vested in the President and the Prime Minister under this Constitution until the calls upon the interim National Assembly to elect the interim President and the interim Prime Minister, who shall then exercise their respective powers vested by this Constitution.
>
> "(2) All proclamations, orders, decrees, instructions, and acts promulgated xxx by the incumbent President shall be part of the law of the land, and shall remain valid, binding, and effective even after lifting of martial law or the ratification of this Constitution xxx"

[15] Art XVI, Sec 2. The 1987 Const. now requires the plebiscite to "be held not earlier than 60 days nor later than 90 days xxx" – Art XVII, Sec 4

[16] The system of initiative on amendments to the Constitution under Art XVII, Sec 2 is *not* self-executory. Thus, the right of the people to directly propose amendments to the Constitution through a system of initiative would remain entombed in the cold niche of the Constitution until Congress provides for its implementation (*Santiago v. COMELEC*, 270 SCRA 106)

afterthought. It is neither germane or relevant to that section. While the Act provides subtitles for initiative on national laws and local laws, no subtitle is provided for initiative on the Constitution. This conspicuous silence simply means that the main thrust of the Act is initiative and referendum on national and local laws [only]. RA 6735 merely paid lip service to the system of initiative on amendments to the Constitution in contrast to the utmost diligence and care exerted in providing for the details of that for the national and local legislation.

(2) No. The lacunae of RA 6735 on the foregoing substantive matter (the system of initiative on amendments to the Constitution) are fatal and cannot be cured by "empowering" the COMELEC "to promulgate such rules and regulations as may be necessary to carry out the purposes [the] Act" Therefore, COMELEC Res. No. 2300, insofar as it promulgates such rules and regulations, is void.

Two elements to be complied with in order to propose constitutional amendments by initiative:

(1) the people must author and thus sign the entire proposal; and
(2) the proposal must be embodied in a petition.

Lambino v. COMELEC
GR 174153, 505 SCRA 160 [Oct 25, 2006]

Facts. *Lambino* et al. sought to propose amendments to the Constitution by People's initiative through RA 6735. The sheet used to gather signatures from the people contained only the questions "Do you approve of the Amendment of Articles VI and VII of the 1987 Constitution, changing the form of the government from the present bicameral-presidential to a unicameral-parliamentary system of government in order to achieve greater efficiency xxx; and providing an Article XVIII as Transitory Provisions xxx?" The signature sheet further provides a table wherein the personal data of the person signing shall be indicated. Subsequently, Lambino et al. filed with *COMELEC* to hold a plebiscite to ratify their proposal. They have in fact gathered signatures of >12% of all registered voters with each district represented by 3% at least (6,327,952 voters). COMELEC invoked Santiago v. COMELEC and denied the petition.

Issue. Did the Lambino petition comply with Art XVII, Sec 2 of the Constitution?

Held. No. *Firstly*, for the amendment to be "directly proposed by the people through initiative upon a petition", *two elements* must be complied with:

(1) the people must author and thus sign the entire proposal (no agent or representative can sign on their behalf); and
(2) the proposal must be embodied in a petition.

The deliberations in the 1986 Constitutional Commission show that the framers mean to adopt the American Jurisprudence on the matter which in particular reveals that the intention is that the people must first see the full text of the proposed amendments before they sign, and the people must sign the petition containing such full text. The said elements are present only if the foregoing has been shown. In the Lambino petition, the proposed changes were not incorporated with or attached to the signature sheets.

Secondly, American Jurisprudence outlaws logrolling—when the initiative petition incorporates an unrelated subject matter in the same petition. In the Lambino petition, the proposed changes include a provision empowering the interim Parliament to convene and propose amendments/revisions to the Constitution, which the Court finds as logrolling.

Thirdly, a shift from a bicameral-presidential to a unicameral-parliamentary system xxx constitute, beyond doubt, a revision. It is clear the Constitution only sanctions "amendments" and not revisions thereto by people's initiative.

From the foregoing, it is plain that even if RA 6735 is valid, Lambino's initiative will still fail. There is no need to revisit the ruling in Santiago v. COMELEC as the outcome of this case will not be changed thereby.

The CONCEPT of the STATE

State – A politically organized sovereign community independent of outside control bound by ties of nationhood, legally supreme within its territory, acting through a government functioning under a regime of law.

Collector of Internal Revenue v. Campos Rueda
GR L-13250, 42 SCRA 23 [Oct 29, 1971]

Facts. Maria Cerdeira, a Spanish national and resident of Tangier, Morrocco died in 1955, leaving intangible properties in the Philippines. Petitioner *CIR* assessed deficiency estate and inheritance taxes due on the transfer of said intangible personal properties, which her administrator (respondent *Campos Rueda*) refused to pay, claiming exemption from payment under the reciprocal provision of Sec. 122 of the Tax Code: "x x x That no tax shall be collected x x x in respect of intangible personal property x x x if the laws of the *foreign country* of which the decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country x x x." The laws of Tangier in fact provides substantially that "transfers by reason of death of movable properties, corporeal or *incorporeal*… were *not* subject… to the payment of any death tax, whatever might have been the nationality of the deceased or his heirs and legatees."

CIR ruled that Tangier was a mere principality, not a "foreign country" with international personality falling within the exemption under Sec. 122 of the Tax Code.

Issue. Is the acquisition of an international personality necessary for a "foreign country" to fall within the exemption of Sec. 122 of the Tax Code?

Held. No. It has been settled in previous rulings that even principalities—such as the State of California of the United States and Liechtenstein—fall within the exemption where conditions are such that demand reciprocity.[17]

The term "Govt of the RP" refers to that govt entity through which the functions of the govt are exercised as an attribute of sovereignty. It includes municipal corporations but not govt-owned or controlled corporations.

Bacani v. NACOCO
GR L-9657, 100 Phil 468 [Nov 29, 1956]

Facts. Plaintiffs *Bacani* and Matoto, both court stenographers at Branch VI of CFI of Manila, entered in an agreement with the counsel of National Coconut Corporation (NACOCO) such that the latter will pay P1 per page of transcript of notes. The Auditor General ordered that the payment made by the counsel of NACOCO be reimbursed through a deduction to the plaintiffs' salaries every payday, assuming that NACOCO is included in the term "Government of the Republic of the Philippines" for the purpose of exemption of the legal fees provided for in the Rules of Court.

Issue. Is NACOCO included under the term "Government of the Republic of the Philippines"?

Held. No. The term "Govt of the RP" used in the xxx Revised Administrative Code refers to that govt entity through which the functions of the govt are exercised as an attribute of sovereignty, and in this are included those arms which political authority is made effective whether they may be provincial, municipal or other form of local govt. These are called municipal corporations. They do not include govt entities which are given a corporate personality separate and distinct from the govt which are governed by Corporation Law, such as NACOCO. These are called government-owned or controlled corporations which may take form of a private enterprise or one organized with the powers and formal

[17] *State* – A politically organized sovereign community independent of outside control bound by ties of nationhood, legally supreme within its territory, acting through a government functioning under a regime of law. Described as the juridical personification of the nation. People occupying a definite territory, politically organized, exercising by means of its government its sovereign will over the individuals within it and maintaining its separate international personality. (*CIR v. Campos Rueda*, 42 SCRA 23)

characteristics of a private corporation. NACOCO is thus not exempted from paying legal fees including the transcription of notes.

The traditional classification of governmental functions into constituent and ministrant are now obsolete. The constitutional policy on social justice now make the traditionally ministrant functions obligatory.

Phil. Virginia Tobacco Administration v. CIR
No. L-32052, 65 SCRA 416 [July 25, 1975]

Facts. Respondents filed with the Court of Industrial Relations (CIR) a petition wherein they alleged their employment relationship with the Phil. Virginia Tobacco Administration (PVTA), the overtime services in excess of the regular 8 hours a day rendered by them, and the failure of PVTA to pay them overtime compensation in accordance with the Eight-Hour Labor Law (CA No. 444). CIR found for the respondents and directed PVTA to pay out the amount prayed for. PVTA claims that the matter is beyond the jurisdiction of CIR as PVTA is exercising governmental functions (and not proprietary). Respondents predicate their objection on the distinction between constituent and ministrant functions of the govt.

Issue. Is PVTA discharging governmental functions?

Held. Yes. The objection of respondents with its overtones of the distinction between constituent and ministrant functions of governments is futile and irrelevant. The growing complexities of modern society have rendered the traditional (Wilsonian) classification[18] of the functions of government quite unrealistic, not to say obsolete. The *laissez faire* principle, which is the basis of the old classification, is of the past. The areas which used to be [the ministrant and thus "optional" functions of the govt] continue to be absorbed within the activities that the govt must undertake if it is to meet the increasing social challenges of the times. Indeed, this development is more in consonance with the Constitution itself which adopts a national policy on social justice. It would be then to reject this [constitutional philosophy] if the plea of PVTA that it discharges governmental function were not heeded. That would be to retreat than to advance.[19]

The Govt as parens patriae has the right to enforce all charities of public nature where no other person is entrusted with it.

Government of the Philippine Islands v. Monte de Piedad
GR L-9959, 35 Phil 728 [Dec 13, 1916]

Facts. About $400,000 were subscribed and paid into the treasury of the Phil. Islands by the inhabitants of the Spanish Dominion for the relief of those damaged by an earthquake which took place in the Phil. Islands. However, part of the money collected was never distributed and was instead deposited with respondent bank *Monte de Piedad*. On account of various petitions of persons and heirs of the victims to whom the money was supposed to be given, the Phil. Islands filed an action for recovery. A judgment was rendered in favor of the govt. *Monte de Piedad* appealed, questioning the personality of the Govt. of the Phil. Islands to institute the action, contending that the suit can only be instituted by the intended beneficiaries or by the heirs of the victims.

Issue. Does the Phil. Govt have the personality to institute the action?

Held. Yes. In this country, the Govt as *parens patriae* has the right to enforce all charities of public nature, by virtue of its general superintending authority over the public interests, where no other person is entrusted with it. This prerogative of *parens patriae* is inherent in the supreme power of [the] State xxx. It is a most beneficent function, and often necessary to be exercised in the interest of humanity, and for the prevention of injury to those who cannot protect themselves. Furthermore, it would be impracticable for the beneficiaries to institute an

[18] The *traditional classification* distinguished between 2 kinds of governmental functions: (1) constituent and (2) ministrant. Those *constituent* functions include those relating to the maintenance of peace and the prevention of crime, those regulating property and property rights, those relating to the administration of justice and the determination of political duties of citizens, and those relating to national defense and foreign relations. The *ministrant* functions include those merely to promote the welfare, progress and prosperity of the people. The constituent functions were deemed compulsory, and the ministrant deemed optional. (*PVTA v. CIR*, 65 SCRA 416)

[19] However, it was held that it does not necessarily follow that just because PVTA was adjudged engaged in governmental rather than proprietary functions, then the labor controversy was beyond the jurisdiction of the CIR.

action or actions either individually or collectively.[20] The only course that can be satisfactorily pursued is for the Government to again assume control of the fund and devote it to the object for which it was originally destined.

The Republic established during Japanese occupation was a de facto govt of the second kind. Judicial proceedings not of political complexion of a de facto govt remain good and valid even after occupation

Co Kim Cham v. Valdez Tan Keh
No. L-5, 75 SCRA 113 [Nov 16, 1945]

Facts. When the Imperial Japanese Forces occupied the City of Manila they proclaimed, among other things, that "all laws now in force in the Commonwealth, as well as executive and judicial institutions, shall continue to be effective for the time being as in the past." Thereafter, a central administrative organization under the name of Philippine Executive Commission was organized and the Chairman thereof issued orders in which the SC, CA, CFI, justices of the peace and municipal courts under the Commonwealth were to continue with the same jurisdiction. Sometime in 1943, the Republic of the Phils. was inaugurated but no substantial change was effected in the organization and jurisdiction of the different courts of justice. When Gen. MacArthur returned in Leyte, he proclaimed that "the laws existing in the statute books of the Commonwealth of the Phils. are in full force and effect and legally binding" and that "all laws, regulations and processes of any other govt on the Phils than that of the said Commonwealth are null and void and without legal effect."

Issues.

(1) Is the govt organized by the Japanese a *de facto* govt?[21]

(2) Is the MacArthur Proclamation invalidating "all laws, regulations and processes" of the Occupation govt applicable also to judicial decisions?

Held.

(1) Yes. It is evident that the Philippine Executive Commission xxx was a civil government established by the military forces or occupation and therefore a *de facto* government of the second kind[22]. xxx As Halleck says, "the government established over an enemy's territory during the military occupation may exercise all the powers given by the laws of war to the conqueror over the conquered, and is subject to all restrictions which that code imposes. It is of little consequence whether such government be called a military or civil government. Its character is the same and the source of its authority the same. In either case it is a government imposed of such territory or the rest of the world, those laws alone determine the legality or illegality of its acts." The fact that the Philippine Executive Commission was a civil and not a military government and was run by Filipinos and not by Japanese nationals, is of no consequence.

(2) No. It is a well-known principle of international law that all judgments and judicial proceedings which are not of a political complexion of a *de facto* govt remain good and valid even after the occupied territory had come again into the power of the titular sovereign. In view thereof, it should be presumed that it was not and could not have been the intention of Gen. MacArthur, in using the phrase "processes of any other govt" in his proclamation, to refer to judicial processes, in violation of said principle of international law.

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[20] It was noted that there are quite numerous victims who no doubt would have left various heirs

[21] *Kinds of de facto govts:*

(1) that govt that gets possession and control of, or usurps, by force or by the voice of the majority, the rightful legal govt and maintains itself against the will of the latter;

(2) that established as an independent govt by the inhabitants of a country who rise in insurrection against the parent state; and

(3) that which is established and maintained by military forces who invade and occupy a territory of the enemy in the course of war, and which is denominated as a govt of paramount force. (*Co Kim Cham v. Valdez Tan Keh*, 75 SCRA 113)

[22] *Distinguishing characteristics of second kind of de facto govt*: (1) that its existence is maintained by active military power within the territories, and against the rightful authority of an established and lawful govt; and (2) that while it exists it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful govt. Actual govts of this sort are established over districts differing greatly in extent and conditions. They are usually administered by military authority, but they may be administered, also, by civil authority, supported more or less directly by military force. (*Ibid.*)

Principle of Auto-limitation – The State has the exclusive capacity of legal self-determination and self-restriction of its sovereign rights.

People v. Gozo
No. L-36409, 53 SCRA 476 [Oct 26, 1973]

Facts. Respondent *Gozo* bought a house and lot located inside the United States Naval Reservation in Olongapo, a territory leased to the US by the Military Bases Agreement. She demolished the house and built another without securing a building permit from the Mayor. Gozo was charged of violation of Municipal Ordinance No. 14. Gozo avers the municipal govt has no jurisdiction over the leased territory. In other words, it is asserted that the Phil. Govt does not exercise sovereignty over the American base.

Issues. Does the Phil govt exercise sovereignty over the American base?

Held. Yes. Under the Principle *of Auto-limitation, any state may, by its consent, express or implied, submit to a restriction of its sovereign rights*. This capacity for legal self-determination and self-restriction is an exclusive prerogative of the State. A state then, if it chooses to, may refrain from the exercise of what otherwise is illimitable competence, a curtailment of what otherwise is a power plenary in character. It may allow another power to participate in the exercise of jurisdictional right over certain portions of the territory but they are still subject to its authority. Such areas do not become impressed with alien character. It retains their native status. *Its jurisdiction is diminished but it does not disappear*. Hence, in this case, "by the Agreement, the Philippine Govt merely consents that the US exercise jurisdiction in certain cases. The Philippine Government has not abdicated its sovereignty over the bases as part of the Philippine territory or divested itself completely of jurisdiction over offenses committed therein. Under the terms of the treaty, the United States Government has prior preferential but not exclusive jurisdiction of such offenses xxx "

Sovereignty is not abrogated (and thus the allegiance thereto is not transferred) during belligerent occupation. Thus, the law on treason is still in effect during such times.

Laurel v. Misa
No. L-409, 77 SCRA 856 [Jan 30, 1947]

Facts. The SC, in a resolution, acted on the petition for the writ of *habeas corpus* filed by petitioner *Laurel* based on the theory that a Filipino citizen who adhered to the enemy giving the latter aid and comfort during the Japanese occupation cannot be prosecuted for the crime of treason defined and penalized by Art 114 of the RPC for the reason that (1) that the sovereignty of the legitimate govt in the Phils and, consequently, the correlative allegiance of Filipino citizens thereto was then suspended; and (2) that there was a change of sovereignty over these Islands upon the proclamation of the Phil Republic.

Issues.

(1) Is the sovereignty of the legitimate govt in the Phils suspended during the Japanese occupation?
(2) Does the law on treason still apply even during the Japanese occupation?

Held.

(1) No. The absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate govt or sovereign is not abrogated or severed by the enemy occupation, because the sovereignty of the govt or sovereign *de jure* is not transferred thereby to the occupier.
(2) Yes. Since the preservation of allegiance of the obligation of fidelity and obedience of a citizen or subject to his government or sovereign does not demand from him a positive action but only passive attitude or forbearance from adhering to the enemy by giving the latter aid and comfort, the occupant has no power to repeal or suspend the operation of the law of treason, essential for the preservation of the allegiance owed by the inhabitants to their legitimate government, or compel them to adhere and give aid and comfort to him; because it is evident that such action is not demanded by the exigencies of the military services or not necessary for the control of the inhabitants and the safety and protection of his army, and because it is tantamount to practically transferring temporarily to the occupant their allegiance to the titular government or sovereignty.

Rule that laws of political nature are deemed suspended during military occupation governs only civilians

Ruffy et al. v. Chief of Staff

No. L-533, 75 SCRA 875 [Aug 20, 1946]

Facts. At the time of war with the Japanese, Lt. Col. Jurado was Commanding Officer of the Bolo Combat Team in Mindoro. When he was murdered, petitioners Maj. *Ruffy et al.* were charged therefor before the General Court Martial. Having resulted in the conviction of 4 of them, they now pray to prohibit the respondents *Chief of Staff* and the Gen. Court Martial from further proceeding. They aver, among others, they are not subject to military law at the time the offense was committed.

Issues. Are Maj. Ruffy et al. subject to military law at the time the offense charged against them were committed?

Held. Yes. The rule that laws of political nature or affecting political relations are considered suspended or in abeyance during the military occupation, is intended for the governing of the *civil* inhabitants of the occupied territory. It is not intended for and does not bind the enemies in arms.

The associative relationship envisioned between the GRP and the BJE, are unconstitutional, for the concept of association presupposes that the associated entity is a state and implies that the same is on its way to independence.

Province of North Cotabato v. Govt of the Rep of the Philippines
GR 183591 [Oct 14, 2008]

Facts. On August 5, 2008, the *Government of the Republic of the Philippines Peace Panel on Ancestral Domain* (GRP)—represented by its Chairman Rodolfo C. Garcia—and the MILF[23]—represented by its Chairman Mohagher Iqbal—were scheduled to sign a Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001 (the MOA-AD) in Kuala Lumpur, Malaysia. The MOA-AD has been initialed by the parties. The MOA-AD mentions, among others, the Bangsamoro Juridical Entity (BJE) to which it grants the authority and jurisdiction over the Ancestral Domain and Ancestral Lands of the Bangsamoro. The signing of the MOA-AD between the GRP and the MILF did not materialize, however, because the SC, upon motion of petitioners, issued a TRO enjoining the GRP from signing the same.

Petitioners assail the constitutionality of the MOA-AD.

Issue. Does the MOA-AD violate Philippine national territory and sovereignty?

Held. Yes. No province, city, or municipality, not even the ARMM, is recognized under our laws as having an "*associative*" relationship with the national government. Indeed, the concept implies powers that go beyond anything ever granted by the Constitution to any local or regional government. It also implies the recognition of the *associated entity* as a state. The Constitution, however, does not contemplate any state in this jurisdiction other than the Philippine State, much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence.

It is not merely an expanded version of the ARMM, the status of its relationship with the national government being fundamentally different from that of the ARMM. Indeed, BJE is a state in all but name as it meets the criteria of a state laid down in the Montevideo Convention, namely, a permanent population, a defined territory, a government, and a capacity to enter into relations with other states.

Even assuming *arguendo* that the MOA-AD would not necessarily sever any portion of Philippine territory, the spirit animating it—which has betrayed itself by its use of the concept of association—runs counter to the national sovereignty and territorial integrity of the Republic.

[23] The MILF is a rebel group which was established in March 1984 when, under the leadership of the late Salamat Hashim, it splintered from the Moro National Liberation Front (MNLF) then headed by Nur Misuari, on the ground, among others, of what Salamat perceived to be the manipulation of the MNLF away from an Islamic basis towards Marxist-Maoist orientations.

ARTICLE XVI § 3. DOCTRINE OF STATE IMMUNITY

Mere allegation that a govt official is being sued in his personal capacity and mere invocation of official character of act imputed to a govt official will not automatically make the doctrine of state immunity applicable.

Sanders v. Veridiano II
No. L-46930, 162 SCRA 88 [June 10, 1988]

Facts. Petitioner *Sanders* was the special services director of the U.S. Naval Station (NAVSTA) in Olongapo City while petitioner Moreau was the commanding officer of the Subic Naval Base, which includes NAVSTA. Respondents Rossi and Wyer were employed as gameroom attendants in the special services dept. of the NAVSTA. Their employment had been converted from permanent full-time to permanent part-time. They instituted grievance proceedings. The hearing officer recommended reinstatement plus backwages. Sanders disagreed and asked in a letter addressed to Moreau for the rejection of the recommendation. Before the start of the grievance proceedings, Moreau as the commanding general purportedly sent a letter to the Chief of Naval Station explaining the change of the respondents' employment status and requesting concurrence therewith. Respondents sued for damages claiming the letters contained libelous imputations and that the prejudgment of the grievance proceedings was an invasion of their personal and proprietary rights. They made it clear, however, that petitioners were being sued in their private or personal capacity. Petitioners moved to dismiss arguing that the acts complained of were performed in the discharge of official duties and that the court had no jurisdiction under the doctrine of state immunity.

Issues.

(1) Were the petitioners acting officially when they did the acts for which private respondents have sued them for damages?
(2) Assuming they are acting in their official duties, is the complaint filed against them by respondents tantamount to a suit against the U.S. govt without its consent?

Held.

(1) Yes. It is abundantly clear that the acts for which the petitioners are being called to account were performed by them, in the discharge of their official duties. xxx The mere allegation that a govt functionary is being sued in his personal capacity will *not* automatically remove him from the protection of xxx *the doctrine of state immunity*. By the same token, the mere invocation of official character will not suffice to insulate him from suability and liability for an act imputed to him as personal tort committed without or in excess of his authority. These well-settled principles are applicable not only to the officers of the local State but also where the person sued in its court pertains to the govt of a foreign state, as in the present case.
(2) Yes. Given the official character of the letters, we have to conclude that petitioners were, legally speaking, being sued as officers of the U.S. govt. As they have acted on behalf of the gov't, and within the scope of their authority, it is the U.S. govt, and not the petitioners personally, that is responsible for their acts xxx thus making the action a suit against the govt without its consent.[24]

The functions of govt officials cease to be official the moment they exceed their authority.

Republic v. Sandoval
GR 84607, 220 SCRA 124 [Mar 19, 1993]

[24] *Exceptions to the general rule that in no case may a public officer be sued without its consent of the state*: a public officer may be sued as such to compel him to do an act required by law, as where, say, a register of deeds refuses to record a deed of sale; or to restrain a Cabinet member, for example, from enforcing a law claimed to be unconstitutional; or to compel the national treasurer to pay damages from an already appropriated assurance fund; or the commissioner of internal revenue or refund tax overpayments from a fund already available for the purpose; or in general, to secure a judgment that the office itself having to do a positive act to assist him. Also, where the govt itself has violated its own laws, the aggrieved party may directly implead the govt even without first filing his claim with the Commission on Audit as normally required, as the doctrine of state immunity *"cannot be sued as an instrument for perpetrating an injustice."* (*Sanders v. Veridiano II*, 162 SCRA 88)

Facts. Following the "Mendiola Massacre"[25] in 1987, Pres. Aquino created the Citizen's Mendiola Commission for the purpose of conducting an investigation of the disorder. She also joined the farmers-marchers days after the ill-fated incident as an "act of solidarity" and promised that the government would address the grievances of the rallyists. The Mendiola Commission recommended, among others, that the victims be compensated by the government. Whereupon, the petitioners filed a formal letter of demand for compensation. Due to the apparent inaction by the government, the petitioners sued for damages against the *Republic*. The Solicitor General contends that this is a case of the State being sued without its consent. Petitioners countered and maintained that the State consented to suit when the Commission recommended that the victims be indemnified. They likewise contend that the actuations of Pres. Aquino following the incident constitute a waiver of the State immunity. Judge *Sandoval* upheld the State.

Issues.

(1) Did the State waive its immunity from suit?

(2) Does this case qualify as a suit against the State?

Held.

(1) No. The *recommendation made by the Mendiola Commission regarding indemnification of the victims of the incident by the gov't does not in any way mean that liability automatically attaches to the State.* Notably, A.O. No. 11 which created the Commission expressly states that its purpose was to conduct an "investigation of the disorder, deaths and casualties that took place." Evidently, it is only a fact-finding committee so that whatever may be its findings, the same shall only serve as the *cause of action* in the event that any party decides to litigate his claim. Its recommendations cannot in any way bind the State immediately, such recommendation not having been final and executory. The *President's actuations likewise cannot be taken as a waiver of State immunity*. The act of jointing the marchers days after the incident, to borrow the words of the petitioners, was but "an act of solidarity by the government with the people". Her promise to address the rallyists' grievances cannot in itself give rise to the inference that the State has admitted any liability, much less can it be inferred therefrom that it has consented to the suit.

(2) No. While the Republic in this case is sued by name, the ultimate liability does not pertain to the govt. Although the anti-riot forces were discharging their official functions when the incident occurred, *their functions ceased to be official the moment they exceeded their authority*. Based on the Commission findings, there was lack of justification by the government forces in the use of firearms. Moreover, the members of the anti-riot forces committed an unlawful act as there was unnecessary firing by them in dispersing the marchers.[26] An officer cannot shelter himself by the plea that he is a public agent acting under the color of his office when his acts are wholly without authority.

An officer who acts outside the scope of his jurisdiction and without the authorization of law renders himself amenable to personal liability in a civil suit. If he exceeds the power conferred on him by law, he cannot shelter himself by the plea that he is a public agent acting under color of his office.

Festejo v. Fernando

No. L-5156, 94 Phil 504 [Mar 11, 1954]

Facts. Defendant *Fernando*, as Director of the Bureau of Public Works, without obtaining authority first from the court and without the consent and knowledge of the plaintiff, and against her express objection, unlawfully took possession of portions of 3 parcels of land belonging to her and caused an irrigation canal to be constructed on the portion of the said parcels of land. Plaintiff filed a complaint to which the trial court issued an order "to return or cause to be returned the possession of the portions of land unlawfully occupied and appropriated and to return the land to its former condition under the expenses of the defendant." The court

[25] The so-called Mendiola Massacre was the well-publicized disordered dispersal of the thousands of farmers-rallyists who were unsatisfied with the agrarian reform program. The clash between the police anti-riot forces and the farmers-rallyists resulted in 12 marchers confirmed dead, 39 wounded by gunshots and 12 with minor injuries.

[26] Some *instances when a suit against the State is proper*: (1) When the republic is sued by name; (2) When the suit is against an unincorporated govt agency; and (3) When the suit is on its face against a govt officer but the case is such that ultimate liability will belong not to the officer but to the govt (*Republic v. Sandoval*, GR 84607)

directed also Fernando to pay the plaintiff in the event that said land cannot be returned. Defendant moved to dismiss the complaint on the ground that the suit was in effect against the Phil govt, which had not given its consent to be sued.

Issue. Is the case a suit against the State without its consent?

Held. No. Concededly, Fernando committed acts outside the scope of his authority when he trespassed the plaintiff's land. When he went outside the boundaries of the right of way upon plaintiff's land and damaged it xxx he must be held to have designedly departed from the duties imposed on him by law.

Ordinarily, the officer or employee committing the tort is personally liable therefor, and may be sued as any other citizen and held answerable for whatever injury or damage results from his tortuous act. xxx *If an officer, even while acting under the color of his office, exceeds the power conferred on him by law, he cannot shelter himself under the plea that he is a public agent.*

United States of America v. Guinto

GR 76607, 182 SCRA 644 [Feb 26, 1990]

Facts. Here are 4 cases consolidated because they all involve the same issue on the doctrine of State immunity.[27] In the 1st case, private respondents, who had been concessionaire inside Clark Air Base, are suing several officers of the U.S. Air Force stationed in Clark in connection with the bidding conducted by them for contracts for barbering services in the said base. The bidding was won by another over the objection of private respondents, who claimed that he made a bid for 4 facilities, including the Civil Engineering Area, which was not included in the invitation to bid. Private respondents sued individual petitioners.

In the 2nd case, private respondent Genove filed a complaint for damages against petitioners for his dismissal as cook in the U.S. Air Force Recreation Center at the John Hay Air Station in Baguio. It has been ascertained after investigation that Genove had poured urine into the soup stock used in cooking the vegetables served to the club customers whereupon, he was dismissed. Genove sued individual petitioners.

In the 3rd case, private respondent Bautista, a barracks boy in Camp O'Donnell, an extension of Clark Air Base, was arrested following a buy-bust operation conducted by individual petitioners. Bautista was charged with violation Dangerous Drugs Act whereupon Bautista was dismissed from his employment. Bautista sued individual petitioners.

In the 4th case, private respondents filed a complaint against petitioners (except the U.S.A.) for injuries sustained by the plaintiffs as a result of the acts of the defendants. Accdg to plaintiffs, the defendants beat them up, and handcuffed them and unleashed dogs on them which bit them in several parts of their body causing extensive injuries.

The United States, though not formally impleaded in the complaints, join all individual petitioners in moving to dismiss on the ground that the cases are suits against the State to which it did not consent.

Issue. Are the 4 cases suits against the State without its consent?

Held. No, in the 1st case. The petitioners cannot plead any immunity from the complaint filed by the private respondents. The barbershops subject of the concessions granted by the U.S. gov't are commercial enterprises operated by private persons. They are not agencies of the U.S. Armed Forces nor are their facilities demandable as a matter of right by the American servicemen. xxx No less significantly, if not more so, all the barbershops concessionaires are, under the terms of their contracts, required to remit to the U.S. gov't fixed commissions.

No, in the 2nd case. This is a suit against the State *with* its consent. The restaurant services offered partake of the nature of a business enterprise undertaken by the U.S. gov't in its proprietary capacity. xxx All persons availing themselves of this facility pay for the privilege like all other customers as in ordinary restaurants. Such services are undoubtedly operated for profit, as a commercial and not governmental activity. Consequently, petitioners cannot invoke the doctrine of state immunity

[27] The rule that a state may not be sued without its consent xxx is one of the generally accepted principles of international law that we have adopted as part of the law of our land under Art II, Sec 2. It is based on the justification that "there can be no legal right against the authority which makes the law on which the right depends." While the doctrine appears to prohibit only suits against the State without its consent, it is also applicable to complaints filed against officials of the State for acts allegedly performed by them in the discharge of their [official] duties. The rule is that if the judgment against such officials will require the State itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the State itself although it has not been formally impleaded. The consent of the State to be sued may be manifested expressly or impliedly. Express consent may be embodied in a general law or a special law. Consent is implied when the state enters into a contract or it itself commences litigation. (*USA v. Guinto*, 182 SCRA 644)

xxx for the reason that by entering into the employment contract with Genove, in the discharge of its proprietary functions, it impliedly divested itself of its sovereign immunity from suit. But considerations notwithstanding, [the Court] held that the complaint must still be dismissed. While suable, the petitioners are nevertheless not liable, and the complaint for damages cannot be allowed on the strength of the evidence.

Yes, in the 3rd case. It is clear that the individually-named petitioners were acting in the exercise of their official functions when they conducted the buy-bust operation against complainant and thereafter testified against him at his trial. Said petitioners were in fact connected with the Air Force Office of Special Investigators and were charged precisely with the function of preventing the distribution, possession and use of prohibited drugs and prosecuting those guilty of such acts.

No, in the 4th case. The contradictory factual allegations deserve a closer study of what actually happened to the plaintiffs. The record is too meager to indicate if the defendants were really discharging their official duties or had actually exceeded their authority when the incident in question occurred. Lacking this information, the Court cannot directly decide the case.

Waiver of State's immunity from suit, being a derogation of sovereignty, will not be lightly inferred, but must be construed strictissimi juris.

The consent of the State to be sued must emanate from statutory authority, hence, from a legislative act, not from a mere memorandum.

Veterans Manpower and Protective Services, Inc. v. Court of Appeals
GR 91359, 214 SCRA 286 [Sept 25, 1992]

Facts. A memorandum of agreement (MOA) was executed between Philippine Association of Detective and Protective Agency Operators, Inc. (PADPAO) and the PC Chief, which fixed the monthly contract rate per guard for 8 hours of security service per day at P2,250.00 within Metro Manila and P2,215.00 outside of Metro Manila. Thereafter, Odin Security Agency (Odin) filed a complaint with PADPAO accusing petitioner Veterans Manpower and Protective Services, Inc. (*VMPSI*) of cut-throat competition by undercutting its contract rate for security services rendered to the Metropolitan Waterworks and Sewerage System (MWSS), to which the latter was found to be guilty by the former and was recommended for expulsion from PADPAO and the cancellation of its license. As a result, VMPSI request for a clearance/certificate of membership from PADPAO was denied. VMPSI wrote to the PC Chief requesting to set aside the findings of PADPAO but to no avail. VMPSI filed a complaint against the PC Chief and PC-SUSIA but the latter filed a motion to dismiss on the grounds that the case is against the State which had not given consent thereto.

Issue. Is the VMPSI's complaint against the PC Chief and PC-SUSIA a suit against the State without its consent?

Held. Yes. The State may not be sued without its consent. The PC Chief and PC-SUSIA contend that, being instrumentalities of the national govt exercising a primarily governmental function of regulating the organization and operation of private detective, watchmen, or security guard agencies, said official (PC-Chief) and agency (PC-SUSIA) may not be sued without the govt's consent, especially in this case because VMPSI's complaint seeks not only to compel the public respondents to act in a certain way, but worse, because VMPSI seeks damages from said public respondents. xxx A public official may sometimes be held liable in his personal or private capacity if he acts in bad faith, or beyond the scope of his authority or jurisdiction, however, since the acts for which the PC Chief and PC-SUSIA are being called to account in this case, were performed by them as part of their official duties, without malice, gross negligence, or bad faith, no recovery may be had against them in their private capacities.

Consenting to suability does NOT mean conceding to liability. The liability of the State is limited to that which it contracts through a special agent.

Merritt v. Government of the Philippine Islands
No. 11154, 34 Phil 311 [Mar 21, 1916]

Facts. Petitioner *Meritt* was riding on a motorcycle along Calle Padre Faura when the General Hospital ambulance struck the plaintiff. The chauffeur of the ambulance was employed by the Hospital. Meritt suffered severe injuries. The Legislature passed Act No. 2457 authorizing Merritt to bring suit against the *Govt of the Phils*. The CFI found for Meritt. In this appeal to the judgment rendered, the Govt claims that the CFI erred in holding that the State is liable for the damages sustained by Meritt even if it be true that the collision was due to the negligence of the chauffeur.

Issue. Is the State not liable for the damages notwithstanding that it was due to the negligence of the chauffeur employed by the State?

Held. Yes. By consenting to be sued, a State simply waives its immunity from suit. It does not thereby concede its liability. It merely gives a remedy to enforce a preexisting liability and submits itself to the jurisdiction of the court, subject to its right to interpose any lawful defense. The *responsibility of the state is limited to that which it contracts through a special agent*, *duly empowered by a definite order or commission to perform some act or charged with some definite purpose which gives rise to the claim*, and not where the claim is based on acts or omissions imputable to a public official charged with some administrative or technical office who can be held to the proper responsibility in the manner laid down by the law of civil responsibility. The negligent chauffer of the ambulance was not such special agent.

The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen.

Amigable v. Cuenca

No. L-26400, 43 SCRA 360 [Feb 29, 1972]

Facts. Petitioner *Amigable* is the registered owner of a lot in Banilad Estate in Cebu City. Without expropriation or negotiated sale, the govt used a portion of said lot for the construction of the Mango and Gorordo Avenues. Amigable requested payment for the portion of her lot which had been appropriated by the govt but the Auditor general disallowed it. Amigable thus sued the Republic. Defendants contended, among others, that the action was a suit against the State without its consent. CFI upheld the State and dismissed the case.

Issue. Is this a case of a suit against the State without its consent?

Held. No. The *doctrine of State immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen*. Had the government followed the procedure indicated by the law Amigable would not be in the sad plaint she is now. It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. Needless to say, when the government takes any property for public use, it is conditioned upon the payment of just compensation, which [in this jurisdiction] is to be judicially ascertained.[28] It thereby makes manifest that it submits to the jurisdiction of a court. There is no thought then that the Doctrine of immunity from suit could still be appropriately invoked.

Implied consent is given when the State itself commences litigation [or when it enters into a contract].

Republic v. Sandiganbayan

GR 90478, 204 SCRA 212 [Nov 21, 1991]

Facts. Pursuant to EO 14 of Pres. Aquino, the PCGG filed an action against private respondents. On motion of private respondents, *Sandiganbayan* ordered to allow amended interrogatories to the PCGG.[29] PCGG refuses to answer the interrogatories and now seeks to nullify the Order contending, among others, that none of its members may be "required to testify or produce evidence in any judicial . . proceeding concerning matters within its official cognizance", suggesting an appeal to the Doctrine of non-suability of the State.

Issue. Is the PCGG immune from suit?

Held. No. PCGG's contention has no application to a judicial proceeding it has itself initiated. By filing suit, PCGG brings itself within the operation and scope of all the rules governing civil actions, *including the rights and duties under the rules of discovery*. Otherwise, the absurd would have to be conceded, that while the parties it has impleaded as defendants may be required to "disgorge all the facts" within their knowledge and in their possession, it may not itself be subject to a like compulsion. It is axiomatic that in filing an action, the State divests itself of its sovereign character and shed its immunity from suit descending to the level of ordinary litigant.

[28] Art III, Sec 9, Constitution. Private property shall not be taken for public use without just compensation.

[29] *Interrogatories to parties* is one of the *modes of discovery* in adjective law which are devised for the purpose of enabling parties to obtain the fullest possible knowledge of the issues and facts before trials. The amended interrogatories in the case at bar chiefly sought factual details relative to specific averments of PCGG's amended complaint, e.g. "what specific acts… were committed by defendants… in concert with… F. Marcos… in furtherance of the alleged systemic plan of F. Marcos to accumulate ill-gotten wealth?"

The PCGG cannot claim a superior or preferred status to the State, even while assuming to represent or act for the State.

[Express] consent of the State to be sued must emanate from statutory authority.

Republic v. Feliciano
No. L-70853, 148 SCRA 424 [Mar 12, 1987]

Facts. Pres. Magsaysay issued Proclamation No. 90 reserving for settlement purposes, a tract of land situated in Tinambac and Siruma, Camarines Sur. Pursuant thereto, the Land Authority started subdividing and distributing the tract of land to the settlers. Respondent *Feliciano,* claiming to be the private owner of a parcel of land included within that distributed to the settlers, filed a complaint against the petitioner *Republic* for the recovery of ownership and possession thereof. The trial court ruled in his favor. The appellate court reversed it, dismissing his complaint on the ground of non-suability of the State. Feliciano contends that the consent of the Republic may be read from Proclamation No. 50 itself, when it established the reservation "subject to private rights, if any there be."

Issue. Did the State consent to be sued?

Held. No. No such consent can be drawn from the language of the Proclamation. The exclusion of existing private rights from the reservation established by Proclamation No. 90 cannot be construed as a waiver of the immunity of the State from suit. Waiver of immunity, being a derogation of sovereignty, will not be inferred lightly but must be construed in *strictissimi juris*. Moreover, the Proclamation is not a legislative act. The *consent of the State to be sued must emanate from statutory authority*. Waiver of State immunity can only be made by an act of the legislative body. Not having consented, the State is still, in this case, immune from suit.

Restrictive Application of State immunity is now the rule – State immunity now extends only to acts jure imperii as against jure gestionis.

United States of America v. Ruiz
No. L-35645, 136 SCRA 487 [May 22, 1985]

Facts. Private respondent responded to the United States' invitation to submit bids for the repair of the wharves or shoreline of its Naval Stations. Subsequently, private respondent received from the U.S. 2 telegrams requesting it to confirm its price proposals and for the name of its bonding company to which they complied. This to them signifies that the U.S. has accepted their bid. Later, private respondent was notified that it was not awarded the projects. Private respondent sued U.S. Individual petitioners question the jurisdiction of the court on the ground of State immunity from suit.

Issue. Is the U.S. immune from suit?

Held. Yes. The *restrictive application of State immunity* is now the rule, limiting it to proceedings that arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs. Stated differently, a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into *business contracts*. It does not apply where the contract relates to the exercise of its sovereign functions.[30] In this case, the projects—the repair of wharves or shoreline—are an integral part of the naval base which is devoted to the defense of both the U.S. and the Phils., indisputably a function of the gov't of the highest order; they are not utilized for nor dedicated to commercial or business purposes.

The ultimate test to determine to whether the act is jure imperii or jure gestionis: whether the state is engaged in the activity in the regular course of business. If not and it is in pursuit of a sovereign activity or an incident thereof, then it is an act jure imperii.

Where the plea of immunity is affirmed by the executive branch, it is the duty of the courts to accept this claim so as not to embarrass the executive arm of the govt in conducting the country's foreign relation.

The Holy See v. Rosario, Jr.
GR 101949, 238 SCRA 524 [Dec 1, 1994]

[30] Because the activities of States have multiplied, it has been necessary to distinguish them between (1) sovereign and governmental acts (*jure imperii*) and (2) private, commercial and proprietary acts (*jure gestionis*). (*U.S.A. v. Ruiz*, 136 SCRA 487)

Facts. The petition arose from a controversy over a parcel of land, Lot 5-A, located in the Municipality of Paranaque. Said Lot 5-A is contiguous to Lots 5-B and 5-D registered in the name of Philippine Realty Corp. The three lots were sold to Licup through an agent. Later, Licup assigned his rights to the sale to respondent Starbright Enterprises (Starbright). In view of the refusal of the squatters to vacate said lots, a dispute arose as to who of the parties has the responsibility of evicting and clearing the land of squatters. Thereafter, the *Holy See* (a foreign state exercising sovereignty over the Vatican City[31]) through its Ambassador, the Papal Nuncio, sold Lot 5-A to a third person (Tropicana Corp.). Lot 5-A was previously acquired by the Holy See by donation from the Archdiocese of Manila for constructing thereon the official place of residence of the Papal Nuncio. In subsequently selling the lot, no profit was intended. The Holy See merely wanted to dispose of the same because the squatters living thereon made it almost impossible for them to use it.

Starbright filed a complaint against the Holy See who pled sovereign/diplomatic immunity. Starbright insists that the doctrine of non-suability does not apply for the Holy See has divested itself of such cloak when, of its own free will, it entered into a commercial transaction for the sale of parcel of land located in the Phils. The trial court upheld Starbright. Hence this petition. Meanwhile, the DFA moved to intervene in behalf of the Holy See, and officially certified that the Embassy of the Holy See is a duly accredited diplomatic mission to the Republic of the Phils exempt from local jurisdiction and entitled to all the rights, privileges and immunities of a diplomatic mission or embassy in this country.

Issue. Is the Holy See entitled to sovereign immunity?[32]

Held. Yes. The mere entering into a contract by a foreign state with a private party cannot be the ultimate test [as to whether it is acting *jure imperii* or *jure gestionis*]. *The logical question is whether the foreign state is engaged in the activity in the regular course of business. If not, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a sovereign activity, or an incident thereof, then it is an act jure imperii*, especially when it is not undertaken for gain or profit.

In the case at bench, the Holy See did not buy and sell the lot in the ordinary course of a real estate business. Lot 5-A was in fact donated to it for constructing thereon the official place of residence of the Papal Nuncio [which is necessary for the creation and maintenance of its diplomatic mission]. In subsequently selling the lot, no profit was intended.

Moreover, the privilege of sovereign immunity in this case was sufficiently established by the Certification of the DFA. *Where the plea of immunity is recognized and affirmed by the executive branch, it is the duty of the courts to accept this claim so as not to embarrass the executive arm of the govt in conducting the country's foreign relation.*

Even if the State consented to be sued and its liability adjudged, its public funds may not be disbursed by judicial order. There must be a corresponding law of appropriation.

Republic v. Villasor

No. L-30671, 54 SCRA 83 [Nov 28, 1973]

Facts. A decision was rendered in a special proceeding against the petitioner *Republic* thereby confirming the arbitration award in favor of respondent Corporation. Judge *Villasor* thereafter ordered a writ of execution and the sheriff accordingly served notices of garnishment with several banks on the "monies due the AFP". The Republic challenged the validity of said Order as the funds were certified by the AFP comptroller as funds duly appropriated for the pensions, pay and allowances of its military and civilian personnel among others.

Issue. May the funds of the AFP (public funds) be garnished?

[31] *N.B.* The Vatican City fits into none of the established categories of states. It represents an entity organized not for political but for ecclesiastical purposes and international object. However, the Vatican City has an independent government of its own, with the Pope, who is also head of the Roman Catholic Church, as the Holy See or Head of State. Despite of its size and object, the Republic of the Philippines has accorded the Holy See the status of a foreign sovereign. The Holy See, through its Ambassador, the Papal Nuncio, has had diplomatic representations with the Philippine government since 1957. With respect to the Holy See, this appears to be the universal practice in international relations. (*The Holy See v. Rosario, Jr*., 238 SCRA 524)

[32] There are 2 conflicting concepts of sovereign immunity: (1) *classical or absolute theory* – a sovereign cannot, without its consent, be made a respondent in the courts of another sovereign; (2) *newer or restrictive theory* – the immunity of the sovereign is recognized only with regard to public acts or acts *jure imperii* of a state, but not with regard to private acts or acts *jure gestionis*. (*Ibid*.)

Held. No. A corollary of [the Doctrine of sovereign immunity] is that public funds cannot be the object of a garnishment proceeding even if the consent to be sued had been previously granted and the State liability adjudged. xxx The universal rule is that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the state of execution". For obvious considerations of public policy, the power of the courts ends when the judgment is rendered since govt funds and properties may not be seized [or disbursed] under writs of execution or garnishment but by corresponding appropriations authorized by law.

When the State waives its immunity, all it does is to give the other party an opportunity to prove, if it can, that the State has a liability.

Department of Agriculture v. NLRC
GR 104269, 227 SCRA 693 [Nov 11, 1993]

Facts. The petitioner *DA* and Sultan Security Agency (SSA) entered into a contract for security services to be provided by the latter to the said governmental entity. Pursuant thereto, guards were deployed by SSA in the various premises of the DA. For underpayment of wages, nonpayment of the 13th month pay etc., several guards of the SSA filed a complaint against the DA and SSA. The Executive Labor Arbiter rendered a decision finding the DA jointly and severally liable with SSA for the payment of the money claims and a writ of execution was accordingly issued. The DA prayed to quash the writ of execution with the NLRC which did not. The DA asserts State immunity.

Issue. May the writ of execution be directed against the properties of the DA to satisfy a final and executory judgment?

Held. No. *When the State waives its immunity, all it does, in effect, is to give the other party an opportunity to prove, if it can, that the State has a liability.* The Court reiterated Republic v. Villasor: "power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs or execution or garnishment to satisfy such judgments. Disbursements of public funds must be covered by the correspondent appropriation as required by law."

Government-owned or controlled corporations have juridical personalities separate and distinct from the government, and are thus not covered by State immunity from suit. Their funds are therefore not exempt from garnishment.

Philippine National Bank v. Pabalan
No. L-33112, 83 SCRA 595 [June 15, 1978]

Facts. Respondent Philippine Virginia Tobacco Administration (PVTA) is a government-owned and controlled corporation.

Judgment was rendered against PVTA. Judge *Pabalan* issued a writ of execution followed by a notice of garnishment of its funds deposited with petitioner *PNB*. PNB, invoking the doctrine of non-suability, claims that such funds are public in character, and are therefore exempt from said garnishment.

Issue. May the funds of PVTA be garnished?

Held. Yes. If the funds appertained to one of the regular depts. or offices in the govt, then certainly, [the doctrine of State immunity] would be a bar to garnishment. Such is not the case here. [It has been ruled and is settled that] *funds of public corporations [i.e. GOCCs] which can [thus] sue and be sued [for they are not covered by state immunity from suit] are not exempt from garnishment*. As PVTA is likewise a public corporation possessed of the same attributes, a similar outcome is indicated. Garnishment would lie.

Even assuming that their functions are public, government-owned and controlled corporations are not covered by State immunity from suit.

Rayo v. CFI of Bulacan
No. L-55273-83, 110 SCRA 456 [Dec 19, 1981]

Facts. During the height of a typhoon, the National Power Corp. (NPC), acting through its plant superintendent Chavez, simultaneously opened or caused to be opened all the 3 floodgates of the Angat Dam. As a result, several towns in Bulacan were flooded, and about a hundred died and properties worth millions of pesos were destroyed or washed away. Petitioners, who are the victims of the man-caused flood, filed complaints against the NPC and Chavez. NPC moved to dismiss averring that in the operation of the Angat Dam, it is performing a purely governmental function, hence it cannot be sued without the express consent of the State. Petitioners maintained that NPC is performing merely proprietary functions and that

under its charter (RA 6395), it can "sue and be sued in any court." The CFI upheld NPC.

Issue.

(1) Is the NPC immune from suit?

(2) Does the power of NPC to sue and be sued under its organic act include the power to be sued for tort?

Held.

(1) No. It is not necessary to xxx [determine] whether or not the NPC performs a governmental function with respect to the management and operation of the Angat Dam. *It is sufficient to say that the govt has organized a private corporation (the NPC), put money in it and has allowed it to sue and be sued in any court under its charter. As a government owned and controlled corporation, NPC has a personality of its own, distinct and separate from that of the Govt.*

(2) Yes. The charter provision that the NPC can "sue and be sued in any court" is without qualification on the cause of action and accordingly it can include a tort claim such as the one instituted by the petitioners.

A suit against an UNincorporated govt agency is a suit against the State because it has no separate personality apart from the national govt. Thus, it is immune from suit without the State's consent.

If an UNincorporated agency performs a proprietary function but it is undertaken as an incident to its governmental function, there is NO waiver of non-suability.

Bureau of Printing v. Bureau of Printing Employees Association

No. L-15751, 1 SCRA 340 [Jan 28, 1961]

Facts. The petitioner *Bureau of Printing* (the Bureau) is an instrumentality of the Govt operating under the direct supervision of the Executive Secretary. It is primarily a service bureau designed to meet the printing needs of the Govt. It has been receiving outside jobs, such as printing greeting cards requested by govt officials and printing checks of private banking institutions that require the govt seal and documentary stamps which only the Bureau is authorized to use.

Respondents are suing the Bureau for alleged unfair labor practices. The Bureau in its defense alleges, among others, that it has no juridical personality to sue and be sued as it is but an agency of the govt performing governmental functions.

Issue. Is the Bureau of Printing immune from suit?

Held. Yes. *Though it receives private printing jobs deemed of proprietary character, such is merely incidental to its function.* It is obviously not engaged in business or occupation for pecuniary profit. Its appropriations are provided for in the budget. *It has no corporate existence and as such it cannot be sued.* Any suit, action or proceeding against the Bureau would actually be a suit, action or proceeding against the Govt itself which is immune therefrom *without its consent.*

Mobil Philippines Exploration, Inc. v. Customs Arrastre Service

No. L-23139, 18 SCRA 1120 [Dec 17, 1966]

Facts. Respondent Bureau of Customs (the Bureau) is an unincorporated govt agency. Its primary function is to assess and collect lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines, and penalties. Respondent *Customs Arrastre Service* (the Service) is the unit of the Bureau handling arrastre operations.

Petitioner *Mobil Philippines Exploration, Inc.* (Mobil Phils.) is the consignee of four (4) cases of rotary drill parts shipped from abroad. When the cases arrived at the Port of Manila, they were discharged to the Service. The Service, however, delivered to the consignee only 3 cases. Mobil Phils. filed a complaint against respondents Customs Arrastre and the Bureau of Customs to recover the value of the undelivered case. Respondents invoke nonsuability averring it has no juridical personality. Mobil Phils. aver that the Bureau as operator of the Service, is discharging proprietary functions and as such, is suable.

Issue. Is the Bureau immune from suit?

Held. Yes. The fact that a non-corporate govt entity performs a function proprietary in nature does not necessarily result in its being suable. *If said non-governmental function is undertaken as an incident to its governmental functions, there is no waiver thereby of the sovereign immunity from suit extended to such govt entity*. xxx The Bureau has no personality of its own apart from that of the national govt. The primary function of the Bureau is governmental, and the arrastre service is a necessary incident thereof.

Immunity from suit of an UNincorporated govt agency is determined by the character of the object for which the agency was organized.

If an UNincorporated govt agency was organized to carry out private or non-governmental (proprietary) tasks, then it is NOT immune from suit.

Civil Aeronautics Administration v. Court of Appeals
No. L-51806, 167 SCRA 28 [Nov 8, 1988]

Facts. Petitioner *Civil Aeronautics Administration* (CAA) is an unincorporated govt agency. Under RA 776, it is tasked to administer, operate, manage, control, maintain and develop the Manila International Airport (MIA) and all government-owned aerodromes except those controlled or operated by the AFP. It is also tasked to determine x x x collect and receive landing fees, parking space fees, royalties on sales or deliveries x x x to any aircraft for its use of aviation gasoline, oil and lubricants, spare parts, accessories and supplies, tools, other royalties, fees or rentals for the use of any of the property under its management and control. Its prime objective is the promotion of travel and the convenience of the travelling public.

While walking on the terrace of the MIA, private respondent slipped over an elevation and broke his thigh bone. He sued for damages based on quasi-delict against CAA. CAA invokes non-suability.

Issue. Is the CAA immune from suit?

Held. No. From the provisions of RA 776, it can be gathered that the CAA is tasked with private or non-governmental functions which operate to remove it from the purview of the rule on State immunity from suit. The CAA comes under the category of a private entity. Although not a body corporate, it was created not to maintain a necessary function of govt, but to run what is essentially a business, even if revenues be not its prime objective. It is engaged in an enterprise which, far from being the exclusive prerogative of state, may be undertaken by private concerns. *Immunity from suits is determined by the character of the objects for which the entity was organized.*

Municipal corporations are otherwise covered by State immunity from suit, but because their charter provides for it (there is consent to suit), they can sue and be sued nevertheless.

However, municipal corporations are generally not liable for torts unless it can be shown that they were acting in a proprietary capacity.

Municipality of San Fernando, La Union v. Firme
GR 52179, 195 SCRA 692 [Apr 8, 1991]

Facts. A dump truck of the *Municipality of San Fernando* was allegedly on its way to get a load of sand and gravel for the repair of the municipal streets when it collided with a passenger jeepney. Due to the impact, several passengers died and 4 others suffered physical injuries. The victims, private respondents herein, sued for damages against the Municipality and the driver of the dump truck. The Municipality invokes non-suability.

Issue. Is the Municipality of San Fernando, La Union immune from suit?

Held. No. Municipal corporations, like provinces and cities, are agencies of the State when they engaged in governmental functions and therefore should enjoy the sovereign immunity from suit. Nevertheless, they are subject to suit even in the performance of such functions because their charter provided that they can sue and be sued. xxx [While municipal corporations are suable because their charters grant them the competence to sue and be sued] they are generally not liable[33] for torts committed by them in the discharge of governmental functions and can be held answerable only if it can be shown that they were acting in a proprietary capacity; and We rule that the driver of the dump truck was performing duties or tasks pertaining to his office [as he was on his way to get materials for the repair of the municipal streets].

Municipal funds are public funds exempt from execution. There must be a corresponding appropriation in the form of an ordinance before any money of the municipality may be paid out.

[33] *Suability and liability, distinguished*. – Suability depends on the consent of the state to be sued; liability, on the applicable law and the established facts. The circumstance that a state is suable does not necessarily mean that it is liable; on the other hand, it can never be held liable if it does not first consent to be sued. Liability is not conceded by the mere fact that the state has allowed itself to be sued. When the state does waive its sovereign immunity, it is only giving the plaintiff the chance to prove, if it can, that the defendant is liable. (*Municipality of San Fernando, La Union v. Firme,* 195 SCRA 692)

Municipality of San Miguel, Bulacan v. Fernandez
No. L-61744, 130 SCRA 56 [June 25, 1984]

Facts. In a civil action against the *Municipal Govt of San Miguel, Bulacan*, the CFI rendered judgment holding the Municipality liable to private respondents. A writ of execution was issued. The Municipality moved to quash averring that the Municipality's property or funds are all public funds exempt from execution. No appropriation in the form of an ordinance has been passed by the Sangguniang Bayan for payment of the money judgment.

Issue. Are the funds of the Municipality exempt from execution?

Held. Yes. Well settled is the rule that public property and funds are not subject to levy and execution. There must be a corresponding appropriation in the form of an ordinance duly passed by the Sangguniang Bayan before any money of the municipality may be paid out. The reason is xxx that they are held in trust for the people, intended and used for the accomplishment of the purposes for which municipal corporations are created, and that to subject said properties and public funds to execution would materially impede, even defeat and in some instances destroy said purpose.

Municipality of Makati v. Court of Appeals
GR 89898-99, 190 SCRA 206 [Oct 1, 1990]

Facts. An expropriation proceeding was initiated by the *Municipality of Makati* (the Municipality). After due hearing, judgment was rendered ordering the Municipality to pay the just compensation. A writ of execution was issued, and a notice of garnishment accordingly served upon PNB. The Municipality filed a motion to lift said garnishment but was denied. The Municipality now alleges for the first time that it has actually two accounts with the PNB. It opened the first account exclusively for the expropriation of the subject property. However, this first account had a balance insufficient to pay the entire just compensation adjudged. On the other hand, the Municipality opened the second account for statutory obligations and other purposes of the municipal govt. The Municipality does not oppose the garnishment or the levy under execution of the funds in its first PNB account, but it contends that the funds from the second account, which were also garnished to cover the balance, are exempted from execution without the proper appropriation required under the law.

Issue. Are the funds of the Municipality in the second PNB account exempt from garnishment?

Held. Yes. The funds deposited in the second PNB account are public funds of the municipal govt. Well-settled is the rule that public funds are not subject to levy and execution, unless otherwise provided for by statute. The properties of a municipality which are necessary for public use cannot be attached and sold at execution sale to satisfy a money judgment against the municipality. Municipal revenues which are intended primarily and exclusively for the purpose of financing the governmental activities and functions of the municipality, are exempt from execution. Absent a showing that the Municipal Council of Makati has passed an ordinance appropriating from its public funds an amount corresponding to the balance due under the RTC decision, no levy under execution may be validly effected on the public funds of the Municipality deposited in the second account.

The rule on the immunity of public funds from seizure or garnishment does NOT apply where the funds sought to be levied under execution are already allocated by law specifically for the satisfaction of the money judgment against the government (even when the chief executive does not authorize its release).

City of Caloocan v. Hon. Allarde
GR 107271 [Sept 10, 2003]

Facts. In a suit questioning the legality of the abolition by the Caloocan City Mayor of the position of Asst. City Administrator, among others, petitioner *City of Caloocan* (the City) was ordered, among others, to pay respondent Santiago (who was then the Asst. City Administrator) her back salaries and other emoluments. Judgment lapsed into finality. The City only made partial payment. Respondent RTC Judge *Allarde* issued a writ of execution for the payment of the balance due Santiago. Subsequently, the *City Council passed an ordinance which included the remaining claim of Santiago*. With the City Mayor refusing to sign the check representing the payment due Santiago, the funds of the City with PNB were garnished and Santiago was finally settled in full. The City assails the legality of the garnishment arguing that public funds are beyond the reach of garnishment even with the appropriation passed by the City Council where the Mayor has not authorized its release.

Issue. Are the funds of the City exempt from garnishment?

Held. No. *The rule on the immunity of public funds from seizure or garnishment does not apply where the funds sought to be levied under execution are already allocated by law specifically for the satisfaction of the money judgment against the government*. In such a case, the monetary judgment may be legally enforced by judicial processes.[34] In the case at bar, the City Council has already approved and passed an ordinance allocating for Santiago's claims.

It is when judgment against the govt officials charges financial liability in the State that the action is a suit against the State. Defense of State Immunity is not available to a govt official in a motion to dismiss an action for damages for alleged tortuous acts done by him in the performance of duties.

Philippine Agila Satellite, Inc. v. Trinidad-Lichauco
GR 142362 [May 3, 2006]

Facts. Petitioner *PASI* entered into a Memorandum of Understanding with the DOTC concerning the planned launch of a Philippine-owned satellite into outer space. After having secured 2 orbital slots with the International Telecommunication Union, having secured the confirmation from the Govt of the assignment of said slots, and having proceeded with preparations for the operation of its satellites, respondent DOTC Undersecretary *Lichuaco* allegedly maligned PASI and, with bad faith, issued a Notice of Offer to interested applicants of one of the orbital slots (153 East Longitude) previously assigned to PASI. This allegedly resulted in the awarding of said orbital slot to a third party. PASI filed a civil complaint against Lichauco. The causes of action were (1) for injunction against Lichauco's performing any act in relation to said orbital slot, (2) for declaration of nullity of award of said orbital slot to the third party and (3) for damages against Lichauco herself due to her alleged malicious defamation of PASI. Lichauco now moves to dismiss averring she is being sued for the issuance of the Notice of Offer which she claims was done in the discharge of her official functions, and thus this is a suit against the State without its consent.

Issue. May the action be dismissed on the ground of State immunity?

Held. No. *The rule in actions against govt officials is that if a judgment against such officials will require the State itself to perform an affirmative act to satisfy the same*, such as the appropriation of the amount needed to pay the damages awarded against them, *the suit must be regarded as against the State itself although it has not been formally impleaded*. Thus, as to the first two (2) causes of action, the defense of state immunity from suit does not apply since said causes of action do not seek to impose financial liability against the State, but merely the nullification of State action. These actions cannot be properly considered as suits against the State in constitutional contemplation. However, the rule is different if the govt official is made to account for a tortuous act in the performance of his duties. *Unauthorized acts of govt officials are not acts of the State, and an action arising therefrom is not a suit against the State in constitutional contemplation*. But to establish whether the official concerned had in fact committed the illegal or tortuous acts, a full-blown trial on the merits is necessary. Thus, as for the third cause of action in this case, the defense of State immunity cannot be accorded merit before trial, factual as they are in character. Wherefore, RTC is ordered to try and decide the case on the merits.

The State's act of filing its complaint constitutes a waiver of its immunity from suit. When the State enters into contract, it may be sued even without its express consent, because by entering into a contract the sovereign descends to the level of the citizen.

Republic v. Sandiganbayan
GR 129406, [Mar 6, 2006]

Facts. The petitioner *Republic*, through PCGG, filed several suits involving ill-gotten or unexplained wealth against private respondent Benedicto. Pursuant to its mandate, PCGG issued writs placing under sequestration

[34] The rule is and has always been that all government funds deposited in the PNB or any other official depositary of the Philippine Government by any of its agencies or instrumentalities, whether by general or special deposit, remain government funds and may not be subject to garnishment or levy, *in the absence of a corresponding appropriation as required by law*.

The rule is based on obvious considerations of public policy. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law. (*City of Caloocan v. Hon. Allarde*, GR 107271 [2003])

Benedicto's properties which included 227 shares in Negros Occidental Golf and Country Club, Inc. (NOGCCI). As sequestrator, PCGG did not pay the monthly membership due for the shares. Wherefore, the 227 shares were declared delinquent and were sold in an auction sale. Subsequently, the Republic and Benedicto entered into a compromise agreement wherein the Republic bound itself to lift the sequestration of the NOGCCI shares. The Republic failed to deliver the shares [already foreclosed] in accord with the Agreement. Respondent *Sandiganbayan* gave the Republic a final extension to comply with the directive to deliver the shares or pay the equivalent value but they failed to comply. The Republic now through PCGG invokes State immunity.

Issue. Is the Republic represented by the PCGG immune from suit?

Held. No. Where, as here, the State itself is no less the plaintiff in the main case, immunity from suit cannot be effectively invoked. The Republic's act of filing its complaint constitutes a waiver of its immunity from suit. Moreover, by entering into a Compromise Agreement with Benedicto, the Republic thereby stripped itself of its immunity from suit and placed itself in the same level of its adversary. When the State enters into contract xxx the State may be sued even without its express consent, precisely because by entering into a contract the sovereign descends to the level of the citizen.

ARTICLE II. FUNDAMENTAL PRINCIPLES and STATE POLICIES

REPUBLICANISM
Art II, Sec 1.

Ours is a "government of laws and not of men"

Villavicencio v. Lukban
GR 14639, 39 Phil 778 [Mar 25, 1919]

Facts. 170 women who lived in the segregated district for women of ill repute in Manila were, by orders of respondent Mayor *Lukban* and the chief of Police, isolated from society; and without their consent and opportunity to defend their rights, the 170 women were forcibly hustled on board vessels for deportation to Mindanao. Such order was given for the best of all reasons, to exterminate vice. Deportees petitioned for habeas corpus and contended that they were illegally restrained of their liberty.

Issue. Does Mayor Lukban who is acting in good faith have the right to deport said women of ill-repute against their privilege of domicile in restraint of their liberties?

Held. No. No law, order or regulation authorized Mayor Lukban to force citizens of the Philippines to change their domicile. No official, no matter how high is above the law. The courts shall not permit a government of men, but instead a government of laws. Petition granted.

INCORPORATION CLAUSE
Art II, Sec 2.

Doctrine of incorporation – Every state, by membership of the family of nations, is bound by the general principles of international law, which automatically is incorporated in (becomes a part of) its own laws.

Kuroda v. Jalandoni
No. L-2662, 83 Phil 171 [Mar 26, 1949]

Facts. Petitioner *Kuroda* was the general of Japanese Imperial Forces in the Philippines from 1943 to 1944. He is now charged with having unlawfully disregarded and having failed to "discharge his duties as such commander to control the operations of members of his command, xxx permitting them to commit high crimes in violation of the laws and customs of war" under EO 68. EO 68 was issued in conformity with the generally accepted principles of international law established in the Hague Convention. Kuroda argues EO 68 is unconstitutional as the Philippines is not a signatory nor an adherent to the Hague convention. He contends the Commission, which is prosecuting him, established pursuant to EO 68 is therefore without jurisdiction.

Issue. May Kuroda be prosecuted under the EO 68 which is adherent to the Hague convention even though the Philippines is not a signatory thereof?

Held. Yes. Art II, [sec 2] of our Constitution provides that the Philippines adopts the generally accepted principles of international law as part of the law of the nation. Furthermore, when the crimes were committed, the Philippines was under the sovereignty of the US and thus we were equally bound together with the US to the treaty as the US is a signatory to the convention. Petition to declare EO 68 null and void denied.

Agustin v. Edu
No. L-49112, 88 SCRA 195 [Feb 2, 1979]

Facts. In the interest of safety on all streets and highways, Pres. Marcos issued Letter of Instruction (LOI) No. 229, directing, among others, all owners, users or drivers of motor vehicles to have at all times in their motor vehicles at least 1 pair of early warning device (EWD). Petitioner *Agustin* after setting forth that he "is the owner of a Volkswagen Beetle Car xxx already properly equipped xxx with blinking lights fore and aft, which could very well serve as an EWD xxx" allege that said LOI is unconstitutional as it is an invalid exercise of police power. He asserts it is contrary to the precepts of a compassionate New Society [as being] compulsory and confiscatory on the part of the motorists who could very well provide a

practical alternative road safety device to the specified set of EWDs. He insists it is arbitrary and unconscionable to the motoring public, and illegal and immoral because they will make manufacturers and dealers instant millionaires at the expense of car owners.[35]

Issue. Is the said LOI unconstitutional?

Held. No. While the Court found none of the constitutional defects alleged against the LOI, it still exerted effort in making the following observation: "The conclusion reached by this Court xxx is reinforced by [the] consideration that [this] petition itself quoted the whereas clauses of the assailed LOI: '[Whereas], the hazards posed by such obstructions to traffic have been recognized by international bodies concerned with traffic safety, the 1968 Vienna Convention on Road Signs and Signal and the United Nations Organization (U.N.); [Whereas], the said Vienna Convention, which was ratified by the Philippine Government under P.D. No. 207, recommended the enactment of local legislation for the installation of road safety signs and devices, xxx.' It cannot be disputed then that [the Incorporation clause] in the Constitution possesses relevance xxx. It is not for this country to repudiate a commitment to which it had pledged its word. The concept of *Pacta sunt servanda*[36] stands in the way of such an attitude, which is, moreover, at war with the principle of international morality."

Ichong v. Hernandez

No. L-7995, 101 Phil 1155 [May 31, 1957]

Facts. Petitioner asks for invalidation of RA 1180 which is the Retail Trade Nationalization Act on the ground, among others, that it contravened several treaties namely the Charter of the UN and the Declaration of Human Rights, and the Treaty of Amity between RP and Rep. of China.

Issue. May RA 1180 be declared invalid on the ground that it contravened several treaties which adhere to generally accepted principles of international law?

Held. No. The court found no treaties or international obligations infringed. But even supposing that the law infringes upon said treaties, a treaty is always subject to qualification or amendment by a subsequent law, and the same may never curtail or restrict the scope of the police power of the State. There is no question that RA 1180 was approved in the exercise of police power. Petition denied.

Gonzales v. Hechanova

No. L-21897, 9 SCRA 230 [Oct 22, 1963]

Facts. Respondent Exec. Sec. *Hechanova* entered into a contract with Vietnam and Burma for the purchase of rice. RA 2207 and 3452 explicitly prohibits the importation of rice and corn by the govt. Petitioners thus aver that the respondents acted without jurisdiction or in excess of jurisdiction when the contract was entered into. Respondents contended that under American jurisprudence where a treaty and a statute are inconsistent with each other, the conflict must be resolved in favor of the one which is latest in point of time, which in this case are the contracts.

Issue. Must the alleged executive agreements be upheld over RA 2207 and 3452?

Held. No. The alleged executive agreements[37] are clearly prohibited by the foregoing statutes. Under the principle of separation of powers, an executive may not defeat legislative enactments as that would interfere in the performance of the legislative powers of the Congress. For the American theory to be applicable, said treaty must be entered into with the consent of its Senate, and, hence, of a branch of the legislative department. Thus, in this case, the American theory cannot be made to apply to the executive agreements as they are not authorized by previous legislation without completely upsetting the principle of separation of powers.

In Re: Garcia

64 SCRA 198 [Aug 15, 1961]

[35] The EWD costs P56 to P72 per set

[36] *Pacta sunt servanda.* Literally means "agreements must be kept." A basic principle in civil and international law that the pact is binding upon the parties and must be fulfilled by them in good faith. (*Agustin v. Edu,* 88 SCRA 195)

[37] The Court was not satisfied that the status of the said contracts as executive agreements was sufficiently established

Facts. *Garcia*, a Filipino citizen who practices law in Spain, applied for admission to the practice of law in the Philippines without submitting to the required bar examinations provided in Sec 1 of Rule 127 of the Rules of Court. He argues that under the Treaty on Academic Degrees and the Exercise of Professions between the Philippines and Spain, he is entitled to do so.

Issue. Did Garcia correctly rely on foregoing treaty and should thus be allowed to practice law in the Philippines without taking the bar exams?

Held. No. Besides that the treaty is not applicable to Filipino citizens desiring to practice law in the Philippines, the Court denied the petition on the ground that the treaty could not have been intended to modify the laws and regulations governing admission to the practice of law in the Philippines. The Executive Department may not encroach upon the constitutional prerogative of the Supreme Court to promulgate rules for admission to the practice of law.

DEFENSE OF THE STATE
Art II, Sec 4.

People v. Lagman
GR L-45892, L-45893; 66 Phil 13 [July 13, 1938]

Facts. Respondents *Lagman* and *de Sosa* are charged with violation of the National Defense Law which establishes compulsory military service. Both refused to register to military service. Lagman avers he has a father to support, has no military leanings and does not wish to kill or be killed. Sosa reasons he is fatherless, and has a mother and an 8 year-old brother to support. Respondents question the constitutionality of said law.

Issue. Is the National Defense Law unconstitutional?

Held. No. The National Defense Law, insofar as it establishes compulsory military service, does not go against Art II, sec 2 (now sec 4) of the Constitution but is, on the contrary, in faithful compliance therewith. The duty of the govt to defend the State cannot be performed except through an army. To leave the organization of an army to the will of the citizens would be to make this duty of the govt excusable should there be no sufficient men who volunteer to enlist therein. The right of the govt to require compulsory military service is a consequence of its duty to defend the State.

SEPARATION OF CHURCH AND STATE
Art II, Sec 6.

Art VI, Sec 29(2) is a direct corollary of the principle of separation of church and state.

An otherwise legitimate purpose may be undertaken by appropriate legislation though it may result incidentally in benefits of religious character

Aglipay v. Ruiz
No. L-45459, 64 Phil 201 [Mar 13, 1937]

Facts. Respondent Director of Posts *Ruiz* issued and sold postage stamps commemorative of the 33rd International Eucharistic Congress. Such act was undertaken pursuant to Act No. 4052 which authorized the Dir. of Posts to dispose of the amount appropriated for the cost of plates and printing of postage stamps with new designs as may be deemed advantageous to the Govt. Petitioner Mons. *Aglipay*, Supreme Head of the Philippine Independent Church, prays for a writ of inhibition to prevent Dir. Ruiz from issuing and selling the commemorative postage stamp, averring that it violates *Art VI, Sec 29(2)* of the Constitution.

Notably, the stamps as actually designed and printed, instead of showing a Catholic Church chalice as originally planned, contains a map of the Philippines and the location of the City of Manila, and an inscription as follows: "Seat XXXIII International Eucharistic Congress, Feb. 3-7, 1937."

Issues.

(1) Does Act No. 4025 contemplate a religious purpose?

(2) Is the issuance and selling of the commemorative postage stamps contrary to Art VI, Sec 29(2)?

Held.

(1) No. *Art VI, Sec 29(2) is a direct corollary of the principle of separation of church and state.* The stamps were not issued and sold for the benefit of the Roman Catholic Church. Nor were money derived from

the sale of the stamps given to that church. The only purpose in issuing and selling the stamps was "to advertise the Philippines and attract more tourist to this country." The officials concerned merely took advantage of an event considered of international importance "to give publicity to the Philippines and its people." [Considering the original design and the actual design of the stamps, it can be gleaned that] [w]hat is emphasized is not the Eucharistic Congress itself but Manila as the *seat* of that congress. It is thus obvious that while the issuance and sale of the stamps may be said to be inseparably linked with an event of religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Govt.

(2) No. As Act No. 4052 contemplates no religious purpose in view, it does not authorize the appropriation xxx of public money xxx for the use, benefit xxx of a particular sect or Church. The main purpose, which could legitimately be undertaken by appropriate legislation, should not be frustrated by xxx mere incidental results, more or less religious in character, not contemplated.

In disputes involving religious institutions or organizations, there is one area which the Court should not touch: doctrinal and disciplinary differences.

Taruc, et al. v. Bishop de la Cruz, et al.

GR 144801 [Mar 10, 2005]

Facts. Petitioners *Taruc, et al*. were lay members of the Philippine Independent Church (PIC) in Socorro, Surigao del Norte. They have been clamoring for the transfer of respondent Fr. Florano, their parish priest. Their Bishop (respondent *Bishop de la Cruz*) refused to transfer Fr. Florano.[38] Meanwhile, over the objections of Bishop de la Cruz, Taruc organized an open mass celebrated by a certain Fr. Ambong who was not a member of the clergy of the diocese of Surigao and whose credentials as a parish priest, in the view of Bishop de la Cruz, were in doubt. Whereupon, Bishop de la Cruz expelled/excommunicated Taruc, et al. for disobedience to the duly constituted authority of the PIC and for inciting dissention, among others. Claiming their expulsion to be illegal for having been done without trial allegedly in violation of their right to due process, Taruc, et al. filed a complaint for damages against Bishop de la Cruz, et al. Bishop de la Cruz, et al. allege lack of jurisdiction.

Issue. Do the courts have jurisdiction to hear a case involving the expulsion/excommunication of members of a religious institution?

Held. No. In our jurisdiction, we hold the Church and the State to be separate and distinct from each other. "Give to Ceasar what is Ceasar's and to God what is God's." In a form of government where the complete separation of civil and ecclesiastical authority is insisted upon, the civil courts must not allow themselves to intrude unduly in matters of an ecclesiastical nature. *In disputes involving religious institutions or organizations, there is one area which the Court should not touch: doctrinal and disciplinary differences*. The power of excluding from the church those allegedly unworthy of membership are unquestionably ecclesiastical matters which are outside the province of the civil courts.[39]

SOCIAL JUSTICE
Art II, Sec 10.

Social justice, classically defined

- *is neither communism, nor despotism, nor atomism, nor anarchy, but the humanization of laws and the equalization of social and economic forces xxx;*

[38] It appears that Taruc and Fr. Florano's wife belonged to opposing political parties. Bishop de la Cruz and his subsequent successor found this reasoning too flimsy to warrant the transfer of Fr. Florano.

[39] The Court cited *Fonacier v. CA,* 96 Phil 417 (1955), where it ruled that the amendments of the constitution, restatement of articles of religion and abandonment of faith or abjuration alleged by appellant, having to do with faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church and having reference *to the power of excluding from the church those allegedly unworthy of membership, are unquestionably ecclesiastical matters which are outside the province of the civil courts.* (*Taruc, et al. v. Bishop de la Cruz, et al.*, GR 144801 [2005])

- *is the promotion of the welfare of all the people xxx through the maintenance of a proper economic and social equilibrium in their interrelations of the members of the community xxx through the adoption of measures xxx [and] the exercise of powers xxx of [the government] on the xxx principle of salus populi est suprema lex.*

Calalang v. Williams
No. 47800, 70 PHIL 726 [Dec 2, 1940]

Facts. The National Traffic Commission, under the direction of respondent *Williams*, resolved to recommend to the Dir. of Public Works and to the Sec. of Public Works and Communications that animal-drawn vehicles be prohibited from passing along parts of Rosario St. and Rizal Ave. during certain periods of time. Resolution was approved and executed. Petitioner *Calalang*, in his capacity as private citizen and as a taxpayer, prayed for a writ of prohibition against respondents contending, among others, that CA 548, under which said resolution was acted upon, infringe upon the constitutional precept regarding the promotion of social justice.

Issue. Is CA 548 an infringement of social justice?

Held. No. The promotion of social justice xxx is to be achieved not through a mistaken sympathy towards any given group. Social justice is neither communism, nor despotism, nor atomism, nor anarchy, but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex.*

Social justice therefore must be founded on the recognition of the necessity of interdependence among xxx units of a society and of the protection that should be equally and evenly extended to all groups xxx consistent with the fundamental objective xxx of bringing about "the greatest good to the greatest number.

Property ownership is impressed with a social function.

Almeda v. Court of Appeals
No. L-43800, 78 SCRA 194 [July 29, 1977]

Facts. Respondent *Gonzales* is an agricultural share tenant of the Angeles family, on the latter's land devoted to sugar cane and coconuts. The landowners sold the property to petitioners without notifying Gonzales in writing. Gonzales then filed a complaint for the redemption of the land under his alleged right of redemption provided by the Code of Agrarian Reforms. Notably, under said Code, among those exempted from the automatic conversion of the tenancy system to agricultural leasehold upon its effectivity are sugar lands. Petitioners countered by saying that Gonzales was indeed first offered the sale of land but the latter said that he had no money and that Gonzales made no tender of payment or any valid consignation in court at the time he filed the complaint for redemption. Decision was rendered in favor of Gonzales. Hence this appeal.

Issue. Is the right of redemption available to tenants in sugar and coconut lands?

Held. Yes. Though the Code expressly exempts sugar lands from the automatic conversion to agricultural leasehold, there is *nothing* readable or even discernible [therein] denying to tenants in sugar lands the right of pre-emption and redemption under the Code. The exemption is purely limited to the *tenancy system;* it does not exclude the other rights conferred by the Code, such as the right of xxx redemption.[40] It is to be noted that under the new Constitution, *property ownership is impressed with social function*. Property must not only be for the benefit of the owner but of

[40] The provision of the Code referred to: "…A*gricultural share tenancy* throughout the country xxx shall be automatically converted to agricultural leasehold upon the effectivity of this section. ...*Provided*, That in order not to jeopardize international commitments, lands devoted to crops *covered by marketing allotments* shall be made the subject of a separate proclamation by the President xxx." Sugar is covered by "marketing allotments"

society as well. *The State, in the promotion of social justice, may "regulate the acquisition, ownership, use, enjoyment and disposition of private property, and equitably diffuse property xxx ownership and profits."* One governmental policy of recent date projects the emancipation of tenants from the bondage of the soil and the transfer to them of the ownership o the land they till. Nevertheless, while the Code secures to the tenant-farmer this right of redemption, the exercise thereof must be in accordance with law in order to be valid.[41]

"As between a laborer, usually poor and unlettered, and the employer, who has resources to secure able legal advice, the law has reason to demand stricter compliance from the latter. Social justice in these cases is not equality but protection."

Ondoy v. Ignacio

No. L-47178, 97 SCRA 611 [May 16, 1980]

Facts. Ondoy, a fisherman, was indisputably drowned while employed in the fishing enterprise of *Ignacio.* In the hearing for the claim for compensation filed by petitioner, Ignacio submitted affidavits executed by the chief engineer and oiler of the fishing vessel to the effect that Ondoy, undeniably a member of the working force of the ship, was in that ship, but after being invited by friends to a drinking spree, left the vessel, and thereafter was found dead. On the other hand, the affidavit of the chief-mate of the fishing enterprise stated that "sometime in October 1968, while xxx Ondoy xxx was in the actual performance of his work with [the] fishing enterprise, he was drowned and [he] died on October 22, 1968. That the deceased died in [the] line of duty." The hearing officer summarily ignored the latter affidavit, and dismissed the claim for lack of merit.

Issue. Should the claim for compensation be granted?

Held. Yes. There is evidence, direct and categorical, to the effect that the deceased was drowned while "in the actual performance of his work" with said shipping enterprise. Even without such evidence, the petitioner could have relied on the presumption of compensability under the [Workmen's Compensation] Act once it is shown that the death or disability arose in the course of employment, with the burden of overthrowing it being cast on the person resisting the claim. [The affidavit] to the effect that the deceased left the vessel for a drinking spree certainly cannot meet the standard required to negate the force of the presumption of compensability. This court, in recognizing the right of petitioner to the award, merely adheres to the interpretation uninterruptedly followed by this Court in resolving all doubts in favor of the claimant. The principle of social justice is in this sphere strengthened and vitalized. As between a laborer, xxx and the employer xxx, the law has reason to demand from the latter stricter compliance. Social justice in these cases is not equality but protection.

Social justice cannot be invoked to trample rights of property owners nor can it nullify a law on obligations and contracts.

Salonga v. Farrales

No. L-47088, 105 SCRA 359 [July 10, 1981]

Facts. Respondent *Farrales* is the owner of a parcel of residential land in Olongapo City. Prior to the acquisition of the land, petitioner *Salonga* was already in possession as lessee of a part of the land, on which she had erected a house. Due to non-payment of rentals, Farrales then filed an ejectment case against Salonga and other lessees. Decision was rendered in favor of Farrales. Meanwhile, Farrales sold to the other lessees the parcels of land on which they respectively occupy so that when the decision was affirmed and executed on appeal, the ejectment case was then only against Salonga. Salonga persistently offered to purchase the subject land from Farrales but the latter consistently refused. Salonga filed an action for specific performance praying that Farrales be compelled to sell to him, but it was dismissed. In this appeal, she now invokes Art II, Sec 6 of the 1973 Constitution on social justice.

Issue. Is the constitutional provision on social justice applicable in this case?

Held. No. It must be remembered that *social justice cannot be invoked to trample on the rights of property owners* who under the Constitution and laws are also entitled to protection. The social justice consecrated in our

[41] The Court held that Gonzales did not validly exercise his right of redemption as no valid tender of payment or consignation was made according to law. Decision appealed from reversed.

Constitution was not intended to take away rights from a person and give them to another who is not entitled thereto. Evidently, the plea for social justice *cannot nullify the law on obligations and contracts*,[42] and is therefore, beyond the power of Courts to grant.

REARING THE YOUTH
Art. II, Sec 12.

The State cannot unreasonably interfere with the exercise by parents of their natural right and duty to rear their children, but it may regulate under the police power.

Meyer v. Nebraska
262 US 390 [1922]

Facts. *Meyer*, a teacher in Nebraska, was convicted for unlawfully teaching the subject of reading in the German language to a 10 year-old child who has not passed 8th grade. He was prosecuted under the law "An Act Relating to the Teaching of Foreign Language in the State of Nebraska", which prohibited teaching any subject in any language other than English to any person who has not passed 8th grade. The statute was enacted to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals inimical to the best interests of the U.S. It is thus argued that the enactment comes within the police power of the State.

Issue. May the State prohibit teaching the German language to children who has not reached 8th grade in the exercise of its police power?

Held. No. Evidently the legislature has attempted materially to interfere with, among others, the power of parents to control the education of their own. The power of the State xxx to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. [But] our concern is xxx [that] no emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed. The statute as applied is thus arbitrary and without reasonable relation to any end within the competency of the State.

Pierce v. Society of Sisters
268 US 510 [1925]

Facts. The State of Oregon passed a law requiring children ages 8-16 be sent to public schools in order to compel general attendance at public schools. The *Society of Sisters*, which operates a private school, filed suit to strike down the law as unconstitutional. It is argued that the statute is an unreasonable interference with the liberty of parents xxx to direct the upbringing of their children.

Issue. May the State lawfully require these children to attend only public schools?

Held. No. No question is raised concerning the power of the State to reasonably regulate all schools xxx. [However,] rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty xxx excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not [a] mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations

Art II, Sec 13.

Virtuoso v. Municipal Judge
No. L-47841, 82 SCRA 191 [Mar 21, 1978]

Facts. 17-year old *Virtuoso* was arrested for robbery of a TV set and was required to post bail in the amount of P16,000. In the proceedings, it was ascertained that he was a youthful offender, one who is over 9 and under

[42] Under the law on obligations and contracts, there is no contract on which Salonga's action for specific performance may lie

18 at the time of the commission of the offense. His counsel verbally petitioned for his release under the Child and Youth Welfare Code.

Issue. May Virtuoso be released by reason of the Child and Youth Welfare Code?

Held. Yes. Virtuoso, being 17 years old, is a youthful offender. As such, he is entitled to the Child and Youth Welfare Code and could thus be provisionally released on recognizance in the discretion of a court. This Court should, whenever appropriate, give vitality and force to the Youth and Welfare Code, which is an implementation of this specific constitutional mandate: xxx (now Art II, Sec 13). He was hence released upon recognizance of his parents and counsel.

RIGHT TO A BALANCED AND HEALTHFUL ECOLOGY
Art II, Sec 16.

The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment.

Art II, Sec 16 is self-executing and judicially enforceable — J. Feliciano concurring.

Oposa v. Factoran
GR 101083, 224 SCRA 792 [July 30, 1993]

Facts. Concerned over the continued deforestation of the country, petitioners, all minors represented by their parents, instituted a civil complaint as a taxpayers' class suit "to prevent the misappropriation or impairment of Philippine rainforest" and "arrest the unabated hemorrhage of the country's vital life support systems and continued rape of Mother Earth." They pray for the cancellation of all existing timber license agreements (TLA) in the country and to order the Department of Environment and Natural Resources (DENR) to cease and desist from approving new TLAs. On motion of then DENR Sec. *Factoran*, the RTC dismissed the complaint for lack of a cause of action. Factoran avers that the petitioners raise an issue political (whether or not logging should be permitted) which properly pertains to the legislative or executive branches. Petitioners, claiming to "represent their generation as well as the generation yet unborn", allege their fundamental right to a balanced and healthful ecology was violated by the granting of said TLAs.

Issues.

(1) Do petitioners have a cause of action "to prevent the misappropriation or impairment of Philippine rainforest" and "arrest the unabated hemorrhage of the country's vital life support systems and continued rape of Mother Earth"?

(2) Do the petitioners have a *locus standi* to file suit?

Held.

(1) Yes. The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. xxx Thus, the right of the petitioners to a balanced and healthful ecology is as clear as the DENR's duty to protect and advance the said right.[43]

(2) Yes. The case is a class suit. The subject matter of the complaint is of common and general interest to all citizens of the Philippines and the petitioners are numerous and representative enough to ensure the full protection of all concerned interests. Hence, all the requisites for filing of a valid class suit[44] are present. *We find no difficulty in ruling*

[43] The Court further held that *while the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter*. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation xxx the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are *assumed to exist from the inception of humankin*d. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers xxx that the day would not be too far when all else would be lost not only for the present generation, but also for those xxx generations [to come] xxx.

In *J.* Feliciano's separate concurring opinion, he opined that the *Art II, Sec 15 and 16 of the Constitution are self-executing and judicially enforceable* in its present form (*Oposa v. Factoran*, GR 101083)

[44] Revised Rules of the Court, Rule 3, Sec 12: *Class suit.* When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or

that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. We find enough averments to show, *prima facie*, the claimed violation of their rights on which reliefs may be granted. The case cannot be thus said to raise a political question. What is principally involved is the enforcement of a right vis-à-vis policies already formulated and expressed in legislation. Petition granted.

Laguna Lake Development Authority v. Court of Appeals

GR 110120, 231 SCRA 292 [Mar 16, 1994]

Facts. The City Govt of Caloocan maintains an open garbage dumpsite at the Camarin area. Residents of the area filed a letter of complaint with the *Laguna Lake Devt Authority* (LLDA) praying to stop the operation due to its harmful effects on the health of the residents and the possibility of pollution of the surrounding water. LLDA hence issued a cease and desist order (CDO), enjoining the Caloocan City Govt to completely halt dumping wastes in the said dumpsite. The City Govt moved to set aside the CDO asserting their authority in their territorial jurisdiction in accordance to the general welfare provision of the Local Govt Code. LLDA contends that as an administrative agency which was granted regulatory and adjudicatory powers and functions by RA 4850 and its amendatory laws, it is invested with the power and authority to issue a CDO. RTC and *CA* ruled in favor of the City Govt hence this petition for review.

Issue. Does the LLDA have the authority to issue the CDO?

Held. Yes. LLDA is specifically mandated by RA 4850 and its amendatory laws to adjudicate pollution cases in the Laguna Lake area and the surrounding provinces including Caloocan. Said laws expressly authorizes LLDA to "make, alter or modify orders requiring the discontinuance of pollution" and "to make whatever order may be necessary in the exercise of its jurisdiction". The authority to issue a CDO is, perforce, implied. It is permitted in situations such as the case at bar precisely because stopping the continuous discharge of pollutive xxx effluents into the rivers xxx cannot be made to wait until protracted litigation xxx. The issuance of said order providing an immediate response to the demands of "necessities of protecting vital public interests" gives vitality to Art II, Sec 16 of the Constitution.

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defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

ECONOMY
Art II, Sec 19.

Garcia v. Board of Investments

GR 92024, 191 SCRA 288 [Nov 9, 1990]

Facts. Taiwanese investors formed the Bataan Petrochemical Corp. (BPC) which received its certificate of registration with the respondent *Board of Investments* (BOI) as a new domestic producer of petrochemicals. BPC later proposed to amend its original registration to, among others, change the feedstock from naphtha only to "naphtha and/or LPG" and transferring the job site from Bataan to Batangas. It must be noted that 60% of the national output of naphtha is produced by a wholly govt owned corporation in Batangas, while LPG is produced locally inadequately by Shell necessitating importation thereof. It must also be noted that the original proposed site in Bataan is under the administration, management and ownership of the Phil National Oil Company (PNOC) affording the govt participation in the venture should the project proceed there. Despite vigorous opposition from Congress and Pres Aquino's expressed preference of the original plant site, the BOI still approved of the proposed revisions stating that "the BOI or the govt for that matter could only recommend as to where the project should be located. The BOI recognizes and respects the principle that the final choice is still with the proponent xxx".

Issue. Did the BOI commit a grave abuse of discretion when it yielded to the wishes of the investor, notwithstanding national interest?

Held. Yes. In the light of all the clear advantages manifest in the plant's remaining in Bataan, practically nothing is shown to justify the transfer to Batangas except a near-absolute discretion given by BOI to investors not

only to freely choose the site but to transfer it from their own first choice for reasons which remain murky to say the least. This is a repudiation of the independent policy of the govt expressed in numerous laws and the Constitution to run its own affairs the way it deems best for the national interest. The devt of a self-reliant and independent national economy effectively controlled by Filipinos is mandated in Art II, Sec 19 of the Constitution. In this case, it is but an ordinary investor whom the BOI allows to dictate what we shall do with our heritage.

AGRARIAN REFORM
Art II, Sec 21.

"By the decision we reach today, all major legal obstacles to the CARP are removed, to clear the way for the true freedom of the farmer."

Assoc of Small Landowners in the Phils, Inc v. Sec of Agrarian Reform
GR 78742, 175 SCRA 343 [July 14, 1989]

Facts. The cases involved have been consolidated because they involve common legal questions, challenging the constitutionality of RA 6657 also known as Comprehensive Agrarian Reform law of 1988 and other supplementary laws thereto: PD 27 (provide for compulsory acquisition of private lands for distribution among tenant-farmers and specify maximum retention limits for landowners), EO 228 (declare full land ownership in favor of the beneficiaries of PD 27), Proc No. 131 (instituting CARP) and EO 229 (provide for the mechanics for implementation of CARP). Petitioners argued that the foregoing laws violated the constitutional provisions on just compensation, retention limits, equal protection and the doctrine of separation of powers.

Issues.

(1) Did the CARP law violate the constitutional provision on just compensation?

(2) Did the CARP law fail to provide retention limits as required by Art XIII Sec 4 of the Constitution?[45]

(3) Did the CARP law violate the constitutional provision on equal protection?

(4) Is the issuance of the foregoing presidential acts a violation of the doctrine of separation of powers?

Held.

(1) No. Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The equivalent to be rendered for the property to be taken shall be real, substantial, full and ample. However, the payment of just compensation is not always required to be made fully in money. The other modes, which are likewise available to the landowner at his option, are also not unreasonable because payment is made in shares of stock, LBP bonds, other properties or assets, tax credits and other things of value equivalent to the amount of just compensation.

(2) No. The argument that Proc No. 131 and EO 229 should be invalidated because they do not provide for retention limits is no longer tenable. RA 6657 *does* provide for such limits now.

(3) No. Equal protection simply means that all persons or things similarly situated must be treated alike both as to the rights conferred and the liabilities imposed. The petitioners have not shown that they belong to a different class and entitled to a different treatment. The argument that not only landowners but also owners of other properties must be made to share the burden of implementing land reform must be rejected.

(4) No. The promulgation of PD 27 by Pres Marcos in the exercise of his powers under martial law has already been sustained n Gonzales v. Estrella and we find no reason to modify or reverse it on that issue. As for the power of Pres Aquino to promulgate Proc No. 131 and EO 228 and 229, the same was authorized under Sec 6 of the Transitory Provisions of the 1987 Constitution

[45] Art XIII, Sec 4. The State shall, by law, undertake an agrarian reform program xxx. To this end, the State shall xxx undertake the just distribution of all agricultural lands, subject to such xxx reasonable *retention limits* as the Congress may prescribe xxx.

xxx all major legal obstacles to the CARP are removed, to clear the way for the true freedom of the farmer. Wherefore, the Court holds the foregoing laws sustained against all the constitutional objections raised in the herein petitions xxx.

LOCAL AUTONOMY
Art II, Sec 25.

The principle of local autonomy does not make local governments sovereign within the state or an "imperium in imperio". Local govts can only be an intra sovereign subdivision of one sovereign nation. It can only mean a measure of decentralization of the function of govt.

Basco v. PAGCOR
GR 91649, 197 SCRA 52 [May 14, 1991]

Facts. *PAGCOR*, under PD 1869, is exempt from paying any "tax of any kind or form, income or otherwise as well as fees, charges or levies or whatever nature xxx". *Basco et al*. now seeks to annul PAGCOR alleging, among others, that it intrudes into the local govt's (in the case at bar, the City of Manila) right to impose local taxes and license fees, contravening therefore with the constitutionally enshrined principle of local autonomy.

Issue. Is the tax exemption granted to PAGCOR a violation of the principle of autonomy of local govts?

Held. No. The contention is without merit. Only the National Govt has the power to issue "licenses or permits" for the operation of gambling. The local govts have no power to tax instrumentalities of the National Govt such as PAGCOR. Otherwise, its operation might be subject to control by a mere local govt; consequently, mere creatures of the State can defeat National policies. This doctrine emanates from the "supremacy" of the National Govt over local govt,. The *principle of local autonomy* does *not* make *imperium in imperio*; it can *only* mean a measure of *decentralization of the function of govt*. Art X of the Constitution provides that each local govt unit shall have the power to create its own source of revenue and to levy taxes xxx subject to such xxx limitation as the Congress may provide xxx. Therefore, the exemption clause founded in PD 1869 remains an exception to the herein referred power vested in the local govt units.

The autonomy enjoyed by the autonomous governments of Mindanao is merely a decentralization of administration. Hence, their govts are subject to the jurisdiction of the national courts.

Limbona v. Mangelin
GR 80391, 170 SCRA 786 [Feb 28, 1989]

Facts. The autonomous governments of Mindanao were organized in Regions IX and XII by PD 1618. It established, among other things, "internal autonomy" in the two regions "[w]ithin the framework of the national sovereignty and territorial integrity of the Republic of the Philippines and its Constitution," with legislative and executive machinery to exercise the powers and responsibilities. PD 1618, however, mandates that "[t]he President shall have the power of general supervision and control over Autonomous Regions", and authorizes the legislative arm to discharge only chiefly administrative services.

Petitioner *Limbona* was appointed as a member of the Sangguniang Pampook (Assembly) of Region XII and was thereafter elected as Speaker of said Assembly. He was invited to participate in the consultation and dialogue with the Committee of Muslim Affairs of the House of Representatives regarding the charting of the autonomous govts of Mindanao. Because of said invitation, Limbona sent telegram to all Assemblymen that there will be no session during the time that he will be in Congress. In defiance of Limbona, the Assembly held a session and declared the seat of the Speaker vacant. Limbona thus filed this petition praying his speakership be declared valid and subsisting. Meanwhile, the Assembly passed a resolution[46] expelling Limbona from membership of the Sangguniang Pampook. The jurisdiction of the courts to intervene in the affairs of the Sangguniang Pampook is being challenged.

[46] For having caused to be prepared and signed by him the salaries and emoluments of one Odin Abdula, who was considered resigned after filing his Certificate of Candidacy for Congressmen for the 1st District of Maguindanao xxx.

Issue. Considering the autonomous nature of the governments of Regions IX and XII, are these governments subject to the jurisdiction of the national courts?

Held. Yes. Autonomy is either (1) decentralization of administration or (2) decentralization of power.[47] A government that enjoys autonomy in the second sense (decentralization of power) is subject alone to the decree of the organic act creating it and accepted principles on the effects and limits of "autonomy." On the other hand, a government enjoying autonomy in the first sense (decentralization of administration) is under the supervision of the national government acting through the President (and the Dept of Local Govt). If the Sangguniang Pampook, then, is autonomous in the second sense, its acts are, debatably beyond the domain of this Court in perhaps the same way that the internal acts, say, of the Congress of the Philippines are beyond our jurisdiction. But if it is autonomous in the first sense only, it comes indisputably under our jurisdiction That PD 1618 mandates that "[t]he President shall have the power of general supervision and control over Autonomous Regions" and that it also authorizes the Sangguniang Pampook, their legislative arm, to discharge only chiefly administrative services, persuades us that they were never meant to exercise autonomy in the second sense.

EQUAL ACCESS CLAUSE
Art II, Sec 26.

[47] *Decentralization of administration* — central government delegates administrative powers to political subdivisions in order to broaden the base of government power, and in the process make local governments "more responsive and accountable" while relieving the central government of the burden of managing local affairs, enabling it to concentrate on national concerns. The President exercises "general supervision" over them, but only to "ensure that local affairs are administered according to law." The President has no control over their acts in the sense that he can[not] substitute their judgments with his own.

Decentralization of power — an abdication of political power. The autonomous govt is free to chart its own destiny with minimum intervention from central authorities. Amounts to "self-immolation" since in that event, the autonomous govt becomes accountable not to the central authorities but to its constituency. (*Limbona v. Mangelin*, 170 SCRA 786)

The "equal access" provision is not self-executing. It merely recognizes a privilege subject to limitations imposed by law.

Pamatong v. COMELEC
GR 161872 [Apr 13, 2004]

Facts. Petitioner *Pamatong* filed his certificate of candidacy for President but respondent *COMELEC* refused to give due course to said certificate of candidacy. He was one of those declared as nuisance candidates who could not wage a nationwide campaign and/or are not nominated by a political party or are not supported by a registered political party with a national constituency. In this petition for certiorari, Pamatong avers the denial of his certificate of candidacy is a violation of his right to "equal access to opportunities for public service" under Sec 26, Art II of the Constitution.

Issue. Is the denial of Pamatong's candidacy violative of Art II, Sec 26 of the Constitution?

Held. No. There is no constitutional right to run for or hold public office and, particularly in his case, to seek the presidency. *What is recognized in Art II, Sec 26 is merely a privilege subject to limitations imposed by law*. The [equal access clause] neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort. The provisions under the "Declaration of Principles and State Policies" Article (Art II) are generally considered *not self-executing*, and there is no plausible reason for according a different treatment to the "equal access" provision. Like the [most] of the policies enumerated in Art II, the provision does not contain any judicially enforceable constitutional right but *merely specifies a guideline for legislative or executive action*. *The disregard of the provision does not give rise to any cause of action before the courts.*

POLICY OF FULL PUBLIC DISCLOSURE on matters of public concern
Art II, Sec 28.

For mandamus to lie, it must be shown that the information sought is:

(1) a matter of public concern; and
(2) not an exemption under the law.

Information on civil service eligibility of govt employees in positions requiring them is a matter of public concern.

Legaspi v. Civil Service Commission
No. L-72119, 150 SCRA 530 [May 29, 1987]

Facts. Petitioner *Legaspi* requested for information on the civil service eligibilities of certain persons employed as sanitarians in the Health Dept. of Cebu City. These govt employees had allegedly represented themselves as civil service eligibles who passed the civil service examinations for sanitarians. However, respondent *CSC* denied the request. Claiming his right to public information has been denied, Legaspi now prays for the issuance of a writ of mandamus to compel CSC to disclose the information.

Issue. Does Legaspi have the right to compel CSC to disclose the information?

Held. Yes.[48] *The information sought is a public concern.* Public office being a public trust, it is the legitimate concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligibles. *The information sought is not exempted by law from the operation of the constitutional guarantee.* CSC has failed to cite any provision in the Civil Service Law which would limit the Legaspi's right to know who are, and who are not, civil service eligibles. Notably, the names of those who pass the civil service examinations, as in licensure examinations for various professions, are released to the public. Hence, there is nothing secret about one's civil service eligibility, if actually possessed. In the absence of express limitations under the law upon access to the register of civil service eligibles for said position, the duty of the CSC to confirm or deny the civil service eligibility of any person occupying the position becomes imperative.

The information as to the truth of reports that some opposition members of Congress were granted "clean loans" by the GSIS through the intercession of Imelda Marcos is a matter of public concern.

Right to public information entitles one to access to official records but not to compel its custodians to prepare lists, summaries, etc. thereof.

Valmonte v. Belmonte, Jr.
GR 74930, 170 SCRA 256 [Feb 13, 1989]

Facts. Petitioner *Valmonte* wrote respondent GSIS General Manager *Belmonte* requesting him to be furnished with the list of names of the opposition members (members of UNIDO and PDP-Laban) of the Batasang Pambansa who were able to secure a clean loan of P2 million each on guaranty of Mrs. Imelda Marcos. In reply to the letter, GSIS Dep. General Counsel said that GSIS cannot furnish Valmonte the list of names because of the confidential relationship that exists between GSIS and all those who borrow from it. Valmonte et al. now seek to compel Belmonte to release the information, invoking his right to information. Valmonte et al.

Issues.

(1) Is the information sought a matter of public interest and concern so as to come within the policy of full public disclosure?
(2) Supposing the information sought comes within the policy of full public disclosure, may GSIS be compelled to prepare lists of names of opposition members requested?

Held.

(1) Yes. *The public nature of the loanable funds of the GSIS and the public office held by the alleged borrowers make the information sought*

[48] In every case where the fundamental right to public information is invoked, the availability of access to a particular public record must be circumscribed by the nature of the information sought, i.e., (a) being of *public concern* or one that involves public interest, and (b) *not being exempted by law from the operation of constitutional guarantee* (such as those affecting national security). In case of denial of access, the government agency has the burden of showing that the information requested is not of public concern, or, if it is of public concern, that the same has been exempted by law from the operation of the guarantee. To hold otherwise will serve to dilute the constitutional right. As to what constitutes a matter of public concern, there is no rigid test. It is for the courts to determine on a case to case basis. (*Legaspi v. CSC*, 150 SCRA 530)

clearly a matter of public interest and concern.[49] Wherefore, petitioners are entitled to access to the documents evidencing loans granted by the GSIS, subject to reasonable regulations it may promulgate relating to the manner and hours of examination, to the end that damage to or loss of the records may be avoided, that undue interference with the duties of the custodian of the records may be prevented and that the right of other persons entitled to inspect the records may be insured.

(2) No. Although citizens are afforded the right to information and, pursuant thereto, are entitled to "access to official records," the *Constitution does not accord them a right to compel custodians of official records to prepare lists, abstracts, summaries and the like in their desire to acquire information on matters of public concern*.

MTRCB's voting slips are matters of public concern.

Aquino-Sarmiento v. Morato
GR 92541, 203 SCRA 515 [Nov 13, 1991]

Facts. Petitioner *Sarmiento*, a member herself of MTRCB, requested that she be allowed to examine the Board's records pertaining to the voting slips accomplished by the individual Board members after a review of the movies and TV productions. Her request was denied by respondent MTRCB Chairman *Morato* arguing that such records partake the nature of conscience votes and as such, are purely and completely private and personal. The Board later issued a resolution declaring as confidential, private and personal, the decision of the reviewing committee and the voting slips of the members.

Issue. Does the denial of the examination of the individual voting slips constitute a violation of the constitutional right of access to official records?

Held. Yes. The decisions of the respondent Board and individual members concerned are not considered private. As may be gleaned from PD creating the Board, there is no doubt that its very existence is public in character. The right to privacy belongs to the individual acting in his private capacity. There can be *no invasion of privacy* in the case at bar since *what is sought* to be divulged is a *product of action undertaken in the course of performing official functions*.

[49] *Re "public nature of the loanable funds of GSIS"* – GSIS is a trustee of contributions from the govt and its employees and the administrator of various insurance programs for the benefit of the latter. Its funds are undoubtedly of public character. [Accordingly,] the GSIS is expected to manage its resources with utmost prudence and in strict compliance with the pertinent laws xxx. Thus, xxx [there is] a necessity "to preserve at all times the actuarial solvency of the funds administered by the System." Consequently, the GSIS "is not supposed to grant clean loans." It is therefore the legitimate concern of the public to ensure that these funds are managed properly with the end in view of maximizing the benefits that accrue to the insured govt employees.

Re "public office of alleged borrowers" – The supposed borrowers were Members of the Batasang Pambansa who themselves appropriated funds for the GSIS and were therefore expected to be the first to see to it that the GSIS performed its task with the greatest degree of fidelity. (*Valmonte v. Belmonte, Jr.*, 170 SCRA 256)

Members of the Judiciary cannot be required to assume a position non-judicial in character. They shall not be designated to any agency performing quasi-judicial or administrative functions (Art VIII, Sec 12).

In Re: Manzano
A.M. No. 88-7-1861-RTC, 166 SCRA 246 [Oct 5, 1988]

Facts. RTC Judge *Manzano*, was designated as a member of the Ilocos Norte Provincial Committee on Justice pursuant to EO 856 as amended by EO 326. On examination of the foregoing presidential issuances, it was revealed that among the functions of the Committee is to receive complaints against any apprehending officer xxx who may be found to have committed abuses in the discharge of his duties and refer the same to proper authority for appropriate action. Another function is to recommend revision of any law or regulation which is believed prejudicial to the proper administration of criminal justice. Furthermore, the Committee was to be under the supervision of the Secretary of Justice.

Issue. May Judge Manzano accept his appointment to said Committee without violating the doctrine of Separation of Powers?

Held. No. It is evident from the herein stated functions of the Committee that it performs administrative functions, which are defined as those which involve the regulation and control over the conduct and affairs of individuals for their own welfare and the promulgation of rules and regulations to better carry out the policy of the legislature xxx. Under Art VIII, Sec 12 of the Constitution, the members of the xxx courts xxx shall not be designated to any agency performing quasi-judicial or administrative functions. *While the doctrine of separation of powers is xxx not to be enforced with pedantic rigor, xxx it cannot justify a member of the judiciary being required to assume the position xxx non-judicial in character* xxx if he is to be expected to be confined to the task of adjudication. xxx He is not a subordinate of an executive or legislative official. This does not mean that RTC judges should adopt an attitude of monastic insensibility. An RTC judge should render assistance to said Committees xxx but only when it may be reasonably incidental to the fulfillment of their judicial duties. Request to be authorized to accept the appointment denied.

Doctrine of implication – the grant of an express power carries with it all other powers that may be necessarily inferred from it.

Angara v. Electoral Commission
No. 45081, 63 Phil 139 [July 15, 1936]

Facts. The Electoral Commission was created pursuant to Art VI sec 4 of the 1935 Constitution (now sec 17) which conferred to it the power to "be the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly."

The National Assembly (NA) passed a resolution confirming the election of petitioner *Angara* as member of the NA on Dec 3, 1935. On Dec 9, 1935, the respondent *Electoral Commission* formally organized for the first time and resolved to fix the same date as the final day of filing of election protests. Ynsua, a candidate vying for the Angara's position, filed his election protest before the Electoral Commission on the same date. Angara sought to prohibit the Electoral Commission from taking further cognizance of the Ynsua's motion

Angara argues: the Constitution excludes from the Commission's jurisdiction the power to regulate the proceedings of such election contests. Morever, the Commission can regulate the proceedings of election protests only if the NA has not availed of its primary power to so regulate such proceedings.

*Issue*s.

(1) Does the Electoral Commission have the constitutional power to promulgate rules of procedure (such as fixing a deadline for filing election protests) relating to election protests notwithstanding the lack of express conferment of such power in the Constitution?
(2) Does it have the power the promulgate such rules notwithstanding the resolution of the NA?

Held.

(1) Yes. *It is a settled rule of construction that where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred*. In the absence of any further constitutional provision relating to the procedure to be followed in filing protests before the Electoral Commission, therefore, the incidental power to promulgate such rules necessary for the exclusive power to judge all contests relating to the election must be deemed by necessary implication to have been lodged also in the Electoral Commission.

(2) Yes. *The purpose of the of the creation of the Electoral Commission was to transfer in its totality all the powers previously exercised by the Legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal*. The express lodging [in the now *Art VI, sec 17*] of that power in the Electoral Commission is an implied denial of the exercise of that power by the NA. If the NA is permitted to claim the power to regulate proceedings of election contests, then the grant of power to the Commission would be ineffective for such power would be xxx subject at all times to the regulation of the NA. The purpose of the framers of our Constitution would be frustrated.

Administrative agencies, such as POEA, are vested with two basic powers, the quasi-legislative and the quasi-judicial. This in itself is not violative of due process.

Eastern Shipping Lines v. POEA
GR 76633 [Oct 18, 1988]

Facts. *POEA* was created by EO 797 which mandated it to protect OFWs to "fair and equitable employment practices."

Saco who was married to private respondent was killed in an accident while employed as Chief Officer of the vessel owned by petitioner *Eastern Shipping Lines* (ESL). Private respondent sued for damages. ESL argued that the complaint was not cognizable by the POEA but by the SSS. POEA nevertheless assumed jurisdiction and ruled in favor of the private respondent in accordance with POEA MC No. 2. MC No. 2 prescribed a standard contract to be adopted by shipping companies. ESL went to this Court to move for dismissal. It contests the validity of MC No. 2 stating that it is violative of the principle of non-delegation of legislative powers, contending that it represents an exercise of legislative discretion. It further avers that it has been denied due process because the same POEA that issued MC No. 2 has also sustained and applied it.

Issues.

(1) Is MC No. 2 a violation of the principle of non-delegation of legislative powers?

(2) Did MC No. 2 deny the petitioner of due process?

Held.

(1) No. Because of the increasing complexity of the task of the govt and the growing inability of the legislature to cope directly with the myriad problems demanding its attention, specialization in legislation has become necessary and thus delegation of legislative power is in many instances permitted. The "power of subordinate legislation" or the authority to issue rules (supplementary regulations) to carry out the general provisions of the statute given to administrative bodies has become more and more necessary. MC No. 2 is one such administrative regulation. There are two accepted tests to determine whether or not there is a valid delegation of legislative power, *viz*, the completeness test and the sufficient standard test.[50] The power of POEA in requiring the contract prescribed by MC No. 2 is not unlimited as there is a sufficient standard guiding the delegate (POEA) in the exercise of said authority. That standard is discoverable in the EO itself which, in creating the POEA, mandated it to protect the rights of OFWs to "fair and equitable employment practices."

(2) No. Administrative agencies, such as POEA, are vested with two basic powers, the quasi-legislative and the quasi-judicial. The first enables them to promulgate implementing rules and regulations, and the second enables them to interpret and apply such regulations. Such an arrangement has been accepted as a fact of life of modern governments and cannot be considered violative of due process as

[50] *Completeness test* – the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate the only thing he will have to do is enforce it.

Sufficient standard test – there must be adequate guidelines in the law to map out the boundaries of the delegate's authority. (*Eastern Shipping Lines v. POEA*, GR 76633)

long as the cardinal rights laid down by Justice Laurel in the landmark case of *Ang Tibay v. Court of Industrial Relations* are observed.

A purely justiciable question implies a given right xxx, an act or omission violative of said right, and a remedy granted xxx by law, for said breach of right.

Casibang v. Aquino
No. L-38025, 92 SCRA 642 [Aug 20, 1979]

Facts. Yu was proclaimed elected Mayor of Rosales, Pangasinan in the 1971 local elections. His rival, petitioner *Casibang*, filed an election protest with the CFI. Meanwhile, the 1973 Constitution was ratified. Yu moved to dismiss on the ground that the CFI no longer had jurisdiction over the issue, that, in view of the ratification of the 1973 Constitution, a political question outside the range of judicial review has intervened. He relied on Sec 9 of Art XVII and Sec 2 of Art XI of the new Constitution which granted incumbent officials of the govt a privilege to continue in office at the pleasure of the incumbent President, and which conferred unto the National Assembly (NA) the power to enact a local govt code. This, he avers, states clearly the new form of govt that was to be enforced. CFI ruled in favor of Yu hence this petition.

Issue. Is the issue in the electoral protest a political question?

Held. No. The only issue in the electoral protest case xxx is who between protestant (Casibang) and protestee (Yu) was the duly elected mayor xxx and legally entitled to enjoy the rights, privileges xxx appurtenant thereto xxx. That is the only consequence of a resolution of the issue therein involved – *a purely justiciable question as it implies a given right, xxx an act or omission violative of said right, and a remedy, granted xxx by law, for said breach of right.* Any judgment to be made on that issue will not in any way collide or interfere with xxx Sec 9 Art XVII of the new Constitution xxx. Neither does Sec 2 of Art XI stigmatize the issue in that electoral protest case with a political color. For simply that section allocated unto the NA the power to enact a local govt code. Petition granted.

The term "political question" connotes xxx a question of policy. It refers to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the xxx branch of the govt.

Tañada v. Cuenco
No. L-10520, 103 Phil 1051 [Feb 28, 1957]

Facts. Pending before the Senate Electoral Tribunal (SET) was an election protest filed by members of the Citizens Party (CP) who lost to members of the Nacionalista Party (NP). The Senate was at the time composed of 23 members of the NP and 1 of the CP — petitioner Sen. *Tañada*. When the SET was being organized, Sen. Tañada, in behalf of the CP, nominated himself alone. Sen. Primicias, a member of the NP, then nominated "not on behalf of the [NP] but on behalf of the Committee on Rules of the Senate" Sens. Delgado and respondent *Cuenco* "to complete the membership of the Tribunal". This he claims is the mandate of the Constitution which reads: "xxx Each Electoral Tribunal *shall be composed of nine Members*, three of whom shall be Justices of the Supreme Court xxx and *the remaining six shall be Members of the [House] who shall be chosen by each House*, *three upon nomination of the party having the largest number of votes* and *three of the party having the second largest number of votes* therein. xxx."[51] Over the objection of Sen. Tañada, Sens. Delgado and Cuenco were chosen to sit in the SET. Sen. Tañada now contests them in Court. Respondents aver, among others, that the SC has no jurisdiction on the matter as the issue is a political question and not judicial.

Issue. Is the issue a political question beyond the ambit of judicial inquiry?

Held. No. The issue at bar is not a political question for the Senate is not clothed with "full discretionary authority" in the choice of members of the SET.[52] The exercise of its power thereon is subject to constitutional

[51] 1935 Const., Art VI, Sec 11

[52] The question is said to be *political* when it is a matter which is to be exercised by the people in their primary political capacity. It is *judicial* when it is a matter that has been specifically delegated to some other department or particular officer of the government, with discretionary power to act. In short, the term "*political question*" connotes a *question of policy*; that is, it refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or Executive branch of the Government." It

limitations. It is clearly within the legitimate prove of the judicial department to pass upon the validity the proceedings in connection therewith. We have not only jurisdiction, but also the duty to consider and determine the principal issue[53] raised by the parties herein.

In abnormal times/transition times, presidential exercise of legislative powers is a valid act

Sanidad v. COMELEC

No. L-44640, 73 SCA 333 [Oct 12, 1976]

See under *The CONSTITUTION of the PHILIPPINES,* p. 5, issue (1) and (2)

Political questions may still come within the powers of the Court to review under its expanded jurisdiction (Art VIII, sec 1, par. 2, 2nd clause).

Daza v. Singson

GR 86344, 180 SCRA 496 [Dec 21, 1989]

Facts. Petitioner Rep. *Daza* represents the Liberal Party (LP) in the Commission on Appointments (CA). When Laban ng Demokratikong Pilipino (LDP) was reorganized, the political realignment resulted in the swelling of the number of LDP members to 159 and diminishing that of LP to 17. The House consequently revised its representation in the CA giving Daza's seat to respondent Rep. *Singson* as additional member from the LDP. Daza now challenges his removal. Singson, in response, argues, among others, that the question raised by Daza is political in nature and thus beyond the jurisdiction of this Court.

Issue. Is the issue raised beyond the jurisdiction of the Supreme Court?

Held. No. What is involved is not a discretionary act of the House of Reps that may not be reviewed by the Court because it is political in nature. What is involved here is the legality, not the wisdom, of the act of that chamber in removing the Daza from the CA. The issue presented is justiciable rather than political, involving as it does the manner of filling the CA as prescribed in the Constitution [and not the discretion of the House in the choice of its representatives]. *Even if the question were political in nature, it would still come within the powers of review of the Court under the expanded jurisdiction* conferred upon it by *Art VIII, Sec 1* of the Constitution which includes the authority to determine whether grave abuse of discretion amounting to excess or lack of jurisdiction has been committed by any branch or instrumentality of the govt.

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is concerned with *issues dependent upon the wisdom*, not legality, of a particular measure. (*Tañada v. Cuenco*, 103 Phil 1051)

[53] *On the issue on whether the election of Sens. Delgado and Cuenco is valid,* the Court ruled in the negative. It was held that the clear intention of the framers of the Constitution in prescribing the manner for organizing the Electoral Tribunals is to prevent the majority party from ever controlling the Electoral Tribunals, and that the structure thereof be founded upon the equilibrium between the majority and the minority parties with the Justices of the SC to insure greater political justice in the determination of election contests. Thus, the party having the largest number of votes in the Senate may nominate not more than 3 members thereof to the SET, and the party having the second largest number of votes in the Senate has the *exclusive* right to nominate the other 3 Senators. The Senate may *not* elect, as members of the SET, those who have not been nominated by the political parties specified in the Constitution; hence, the Committee on Rules for the Senate has no standing to validly make such nomination. (*Ibid.*)

DELEGATION OF TARIFF POWERS to the President

[Art VI, Sec 28(2)]

Garcia v. Executive Secretary

GR 101273, 211 SCRA 219 [Jul 3, 1992]

Facts. The Tariff and Customs Code (TCC) states that in the interest of national economy, general welfare and/or national security, the President, subject to limitations therein provided, may increase xxx existing protective rates of import duty xxx when necessary. Pursuant to the TCC, the President issued EO 475 and 478 imposing an additional duty of 9% *ad valorem* to imported crude oil and other oil products, and a special duty of P0.95 per liter of imported crude oil and P1.00 per liter of imported oil products.

Rep. *Garcia* contests the validity of the foregoing EOs averring that they are violative of Sec 24, Art VI of the Constitution which provides: All xxx revenue or tariff bills shall originate in the House of Representatives xxx. He also argues that said EOs contravene the TCC because the latter authorizes the President to, according to him, impose additional duties *only* when necessary to protect *local* industries.

Issue. Are said EOs unconstitutional?

Held. No. There is *explicit Constitutional permission to Congress to authorize the President to, "subject to such limitations and restrictions as [Congress] may impose", fix "within specific limits tariff rates xxx and other duties or imposts xxx*."[54] Moreover, Garcia's argument that the "protection of local industries" is the only permissible objective that can be secured by the exercise of the delegated authority—that which was provided in the TCC to be exercised by the President in "the interest of national economy, general welfare and/or national security"—is a stiflingly narrow one. We believe, for instance, that the protection of consumers is at the very least as important a dimension of the "the interest of national economy, general welfare and national security" as the protection of local industries.

[54] Art VI, Sec 28(2)

Congress does not unduly delegate power when it describes what job must be done, who must do it, and what is the scope of his authority.

Abakada Guro Party List v. Executive Secretary Ermita

GR 168056, 469 SCRA 1 [Sept 1, 2005]

Facts. Because of the mounting budget deficit, revenue generation, inadequate fiscal allocation for education, increased emoluments for health workers, and wider coverage for full value-added tax benefits, RA 9337[55] was enacted by the Congress. Petitioners then filed a petition contending that Secs 4, 5, and 6 of RA 9337 giving the President the stand-by authority to raise VAT rate from 10% to 12% when certain conditions[56] are met constitutes undue delegation of legislative power to tax.

Issue. Is the stand-by authority given to the President an undue delegation of legislative power?

Held. No. The case before the Court is not a delegation of legislative power. It is simple a delegation of ascertainment of facts upon which enforcement and administration of the increase rate under the law is contingent. It leaves the entire operation or non-operation of the increase to 12% rate upon factual matters outside of the control of the executive. No discretion would be exercised by the President.

Congress simply granted the Secretary of Finance the authority to ascertain the existence of a fact. If either of the two instances has occurred, the Secretary of Finance, by legislative mandate, must submit

[55] Also known as the VAT Reform Act

[56] The common *proviso* in Secs 4, 5, and 6 of RA 9337 reads:

"That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of [VAT] to twelve percent (12%), after any of the following conditions has been satisfied:

"(i) [VAT] collection as a percentage of [GDP] of the previous year exceeds two and four-fifth (2 ⅘%); or

"(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%)."

such information to the President. Then the 12% VAT rate must be imposed by the President effective January 1, 2006. *There is no undue delegation of legislative power but only of the discretion as to the execution of a law. This is constitutionally permissible.* Congress does not abdicate its functions or unduly delegate power when it describes what job must be done, who must do it, and what is the scope of his authority; in our complex economy that is frequently the only way in which the legislative process can go forward.

DELEGATION OF EMERGENCY POWERS to the President

[Art VI, Sec 23(2)]

Any law passed in virtue of the emergency powers of the President should be for a limited period only. An emergency is necessarily temporary otherwise it cannot be an emergency.

Araneta v. Dinglasan

GR L-2044, 84 Phil 368 [Aug 26, 1949]

Facts. In view of the state of world war in 1941, CA 671 (Emergency Powers Act) was enacted by the National Assembly (NA) which authorized the President to promulgate rules and regulations to meet such emergency. CA 671 did not expressly fix the term of its effectiveness, although Sec 3 thereof provides "the President x x x shall as soon as practicable upon the convening of the Congress x x x report thereto all the rules and regulations promulgated by him under the powers herein granted." Then Pres. Quezon later wrote in his autobiography describing the circumstances obtaining when he called the NA for a special session and recommended the enactment of CA 671: "[I issued the call for a special session of the NA] when it became evident that we were completely helpless against air attack, and that it was *most unlikely the Philippine Legislature would hold its next regular session* which was to open on January 1, 1942." True enough, Congress met in regular session only on May 25, 1946.

Subsequently, by authority vested by CA 671, then Pres. Roxas issued EO 62 which provided for the regulation of the rentals of residential lots and buildings. By the same authority, his successor, Pres. Quirino issued EOs 192, 225 and 226 providing for the appropriation of public funds in the operation of the national govt and the conduct of the 1949 elections, and the control of exports. Petitioners, being prosecuted under the foregoing EOs, question the validity of the same averring that CA 671, by virtue of which said EOs were issued, has ceased to have any force and effect.

Issue. Has CA 671 ceased to have force and effect?

Held. Yes. CA 671 became inoperative when Congress met in regular session, thus EOs 62, 192, 225 and 226 were issued without authority of law. Art VI, Sec 26 (now Sec 23) of the *Constitution, provides that any law passed by virtue thereof should be "for a limited period."* These words are beyond question intended to mean restrictive in duration. *An emergency xxx "must be temporary or it cannot be said to be an emergency."* More anomalous is that fact that there would be two legislative bodies operating to legislate concurrently and xxx mutually nullifying each other's actions. Furthermore, it is clear from the language of Sec 3 of CA 671 that the legislature intended to limit the duration of the Act when it provided that there was to be only one meeting of Congress at which the President was to give an account of his trusteeship. Moreover, giving much weight on the statements of Pres. Quezon in his autobiography (considering his part in the passage and in the carrying out of the law), it was held that CA 671 was enacted with the specific view of the inability of the NA to meet. Hence, the sole raison d'être for the enactment of CA 671 was the inability for the Congress to function; such emergency period should thus end with the convening of that body.

Emergency powers of the President are necessarily fixed in the law itself. It is unconstitutional for its duration to be dependent on arbitrary will of either Congress or the President.

Rodriguez v. Gella

No. L-6266, 92 PHIL 603 [Feb 2, 1953]

Facts. Notwithstanding the ruling in *Araneta v. Dinglasan*, Pres. Quirino continued to exercise his emergency powers under CA 671, promulgating EOs 545 and 546 appropriating public funds for public works and the relief of victims of calamities. Petitioners seek to invalidate said EOs.

Issue. Are the foregoing EOs invalid?

Held. Yes. More or less the same considerations that influenced the pronouncements in *Araneta v. Dinglasan* are and should be controlling in the case now. [Reiterating], to be constitutional, CA 671 must be construed to be *for a limited period fixed or implied therein*. Express repeal of the same is unnecessary; otherwise it would be unconstitutional since it may never be repealed by Congress, or if Congress attempts to do so, the President may wield his veto. This in fact happened when the President vetoed House Bill 727, repealing all Emergency Powers Acts. This is a clear repugnance of the Art. VI, Sec 26 (now 23) which expressed such power to be limited in period, necessarily fixed in the law itself and not dependent upon the arbitrary will of either the Congress or the President. The President cannot set aside funds for special purposes, since the Congress has been approving appropriation acts. If the President had ceased to have powers with respect to general appropriations, none can remain in respect of special appropriations; otherwise he may do indirectly what he cannot do directly.

DELEGATION TO ADMINISTRATIVE AGENCY

Eastern Shipping Lines v. POEA

GR 76633, 166 SCRA 533 [Oct 18, 1988]

See under *SEPARATION of POWERS,* p. 41, issue (1)

TESTS OF DELEGATION

A law must have a sufficient standard to guide the exercise of the delegated legislative power.

A law delegating legislative power must be complete. Nothing must be left to the judgment of the delegate.

People v. Vera

No. 45685, 65 Phil 56 [Nov 16, 1937]

Facts. Respondent Unjieng was convicted. Under the Probation Act (Act No. 4221), he later applied for probation. Judge V*era* granted the probation. Petitioners filed this action to the end that Unjieng may be forthwith committed to prison in accordance with the final judgment of conviction. Petitioners aver, among others, that said Act is unconstitutional as it is an invalid delegation of legislative powers to provincial boards. The challenged provision thereof reads: "[t]his Act shall apply only in those provinces in which the respective provincial boards have provided for the salary of a probation officer at rates not lower than those now provided for provincial fiscals x x x"

Issue. Does the Probation Act constitute an invalid delegation of legislative powers?

Held. Yes. Act No. 4221 is thereby unconstitutional and void. The effectivity of the Act was made to depend upon an act to be done by the provincial boards, that is, the appropriating of funds for the salary of the probation officer. But the Act does not xxx fix and impose upon the provincial boards any *standard or guide in the exercise of this discretionary power*. What is granted is a "roving commission" xxx. It thus leaves the entire operation or non-operation of the Act upon the provincial boards. The discretion vested is arbitrary because it is absolute and unlimited. This is a virtual surrender of legislative power to them.

US v. Ang Tang Ho

GR 17122, 43 Phil 1 [Feb 27, 1922]

Facts. The Phil. Legislature passed Act No. 2868 "An Act penalizing the monopoly and holding of, and speculation in, palay, rice, and corn under extraordinary circumstances, regulating the distribution and sale thereof, and authorizing the Governor-General xxx to issue the necessary rules and regulations therefor xxx". Pursuant thereto, the Gov-Gen issued EO 53 fixing the price at which rice should be sold. Defendant *Ang Tang Ho* who sold rice at a price greater than that fixed in EO 53 was found guilty of

violation thereof. He contested the validity of said law averring that it constituted invalid delegation of legislative power.[57]

Issue. Did Act No. 2868 invalidly delegate legislative power to the Gov-Gen?

Held. Yes. *A law must be complete in all its terms and provision. When it leaves the legislative branch of the government, nothing must be left to the judgment of the delegate of the legislature*. The Legislature does not undertake to specify or define under what conditions or for what reasons the Gov-Gen shall issue the proclamation, but says that it may be issued "for any cause," and leaves the question as to what is "any cause" to the discretion of the Gov-Gen. The Act also says it may be issued "…whenever… conditions arise resulting in an extraordinary rise in the price of palay, rice or corn." The Legislature does not specify or define what is "an extraordinary rise." The Act also says that the Gov-Gen, "with the consent of the Council of State," is authorized to issue and promulgate "temporary rules and emergency measures for carrying out the purposes of this Act." It does not specify or define what is a temporary rule or an emergency measure, or how long such temporary rules or emergency measures shall remain in force and effect, or when they shall take effect. That is to say, the Legislature itself has not in any manner specified or defined any basis for the order, but has left it to the sole judgment and discretion of the Gov-Gen to say what is or what is not "a cause," and what is or what is not "an extraordinary rise in the price, and as to what is a "temporary rule" or an "emergency measure" for the carrying out the purposes of the Act.

Ynot v. Intermediate Appellate Court

No. L-74457, 148 SCRA 659 [Mar 20, 1987]

Facts. Petitioner *Ynot* had transported 6 carabaos from Masbate to Iloilo when they were confiscated by the police station commander for violation of EO 626-A which prohibits interprovincial movement of carabaos and carabeef. The EO also provides for the forfeiture of the carabao/carabeef unlawfully transported and its subsequent disposition to charitable institutions. Ynot now petitions for review averring that said EO is unconstitutional for, among others, invalid delegation of legislative powers.

Issue. Is EO 626-A an invalid delegation of legislative powers?

Held. Yes. EO 626-A authorized the property seized "to be distributed to charitable institutions and other similar institutions as the Chairman of the National Meat Inspection Commission *may see fit*, in the case of carabeef, and to deserving farmers through dispersal as the Director of Animal Industry *may see fit,* in the case of carabaos." The phrase "may see fit" is xxx extremely generous and dangerous xxx. One searches in vain for the usual *standard* xxx, the limitations that the said officers must observe when they make their distribution. There is none. Definitely, there is here a "roving commission" xxx, a clearly xxx invalid delegation of powers.

Tablarin v. Gutierrez

No. L-78164, 152 SCRA 730 [Jul 31, 1987]

Facts. Petitioners *Tablarin* et al. sought admission into schools of medicine for SY 1987-1988. However, they either did not take or did not successfully take the National Medical Admission Test (NMAT) required by the Board of Medical Education thereby rendering them unqualified/disqualified for admission to medical school under RA 2382 (Medical Act of 1959). Petitioners contest the constitutionality of said RA as amended averring, among others, that it unduly delegated legislative power to the Board of Medical Education.

Issue. Is the Medical Act of 1959 an invalid delegation of legislative powers?

Held. No. The necessary *standards* are set forth in Sec 1 of the 1959 Medical Act: "the standardization and regulation of medical education" and xxx the body of the statute itself. These considered together are sufficient compliance with the requirements of the non-delegation principle. Petition dismissed.

The completeness test and sufficient standard test must be applied concurrently, not alternatively.

Pelaez v. Auditor General

No. L-23825, 15 SCRA 569 [Dec 24, 1965]

[57] The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action to depend. (*US v. Ang Tang Ho*, 43 Phil 1)

Facts. The President, purporting to act pursuant to Sec 68 of the Revised Administrative Code (RAC), issued EOs 93 to 121, 124 and 126 to 129; creating 33 municipalities. Soon after, VP *Pelaez*, instituted the present special civil action challenging the constitutionality of said EOs on the ground, among others, that Sec 68 of the RAC relied upon constitutes an undue delegation of legislative power to the President. The challenged Sec 68 provides: "the President x x x may by executive order define the boundary, or boundaries, of any province, subprovince, municipality, [township] municipal district, or other political subdivision, and increase or diminish the territory comprised therein, may divide any province into one or more subprovinces, separate any political division x x x into such portions as may be required, merge any of such subdivisions or portions with another x x x"

Issue. Does Sec 68 of the RAC constitute an undue delegation of legislative power?

Held. Yes. The authority to create municipal corporations is essentially legislative in nature. Sec 68 of the RAC, insofar as it grants to the President the power to create municipalities does not meet the well-settled requirements for a valid delegation of the power to fix the details in the enforcement of a law. It does not enunciate any policy to be carried out or implemented by the President. Indeed, without a statutory declaration of policy xxx, there would be no means to determine, with reasonable certainty, whether the delegate has acted within or beyond the scope of his authority.[58] It is essential, to forestall a violation of the principle of separation of powers, that the law: (a) be *complete* in itself x x x *and* (b) x x x fix a *standard* to which the delegate must conform x x x.

[58] *The completeness test and sufficient standard test must be applied concurrently, not alternatively.* [In delegating legislative power to another branch of the govt by law,] it is essential, to forestall a violation of the principle of separation of powers, that said law : (a) *be complete in itself*—it must set forth therein the policy to be executed, carried out or implemented by the delegate—and (b) x x x *fix a standard*—the limits of which are sufficiently determinate or determinable—to which the delegate must conform in the performance of his functions. (*Pelaez v. Auditor General*, 15 SCRA 569)

ARTICLE VI. LEGISLATIVE DEPARTMENT

COMPOSITION of the House of Representatives
Art VI, Sec 5.

Constitution did not preclude Congress from increasing its membership by ordinary legislation. – Art VI, Sec 5 (1).

250k is the minimum required population of a city to have more than 1 legislative district. – Art VI, Sec 5 (3).

Tobias v. Abalos
GR L-114783, 239 SCRA 106 [Dec 8, 1994]

Facts. Mandaluyong and San Juan belonged to only one legislative district. RA 7675 was enacted which in effect converted the Municipality of Mandaluyong into a highly urbanized City and divided the legislative district of Mandaluyong and San Juan into 2 separate districts. Petitioners as taxpayers and residents of Mandaluyong assail the constitutionality of the RA contending it is contrary to *Secs 5(1), 5(4), 26(1) and 26(2) of Art VI* of the Constitution.

Issues.

(1) Is RA 7675 contrary to Art VI, Sec 5(1) of the Constitution?
(2) Is it contrary to Sec 5(4) of the same?
(3) Is it contrary to Sec 26(1)?
(4) Is it contrary to Sec 26(2)?

Held.

(1) No. To the argument that the RA resulted in an increase in the composition of the House of Reps beyond that provided in *Art VI, Sec 5(1)* is thus contrary to the same, the court found no merit. The Constitution clearly provides that the present composition of the House of Reps may be increased, if Congress itself so mandates through legislative enactment.
(2) No. To the argument that the RA in effect preempts the right of Congress to reapportion legislative districts pursuant to *Art VI, Sec 5(4)*, it was held bordering on the absurd. It was the Congress itself which drafted, deliberated upon and enacted the assailed law. Congress cannot possibly preempt itself on a right which pertains to itself.
(3) No. To the argument that the division of Mandaluyong and San Juan into 2 separate districts was not sufficiently embraced in the title contrary to *Art VI, Sec 26(1)*, the Court held in the negative. The creation of a separate congressional district for Mandaluyong is not a subject separate and distinct from the subject of its conversion into a highly urbanized city, but is a natural and logical consequence of its conversion xxx. Thus, the title necessarily includes the creation of a separate congressional district for Mandaluyong.

    A liberal construction of the one title-one subject rule has been invariably adopted so as not to cripple legislation. It should be given practical rather than technical construction; it sufficiently complies with the rule if the title expresses the general subject and all the provisions are germane to that general subject.
(4) No. To the argument that there is no mention in the RA of any census to show that Mandaluyong and San Juan had each attained the minimum requirement of 250k inhabitants provided in Sec 5(3), Art VI of the Constitution to justify their separation, the Court held that the reason does not suffice. The Act enjoys the presumption of having passed through the regular congressional processes, including due consideration by the members of Congress of the minimum requirements of the establishment of separate legislative districts. At any rate, It is not required that all laws emanating from the legislature must contain all relevant data considered by Congress in the enactment of said laws.

Mariano, Jr. v. COMELEC
GR 118577, 242 SCRA 211 [Mar 7, 1995]

Facts. RA 7854 is "An Act Converting the Municipality of Makati in Into a Highly Urbanized City xxx". Sec 52 thereof provides that Makati, upon conversion into a Highly Urbanized City, shall have at least 2 legislative districts xxx. The petitioners contend, among others, that the reapportionment cannot

be made by a special law (it can only be made by a general reapportionment law), and that Makati's population xxx stands at only 450k hence it allegedly violates *Art VI, Sec 5(3)* of the Constitution.

Issues.

(1) May Sec 52 of RA 7854, a special law, make reapportionment of the legislative districts?

(2) Does Sec 53 of RA 7854 violate Art VI, Sec 5(3) of the Constitution?

Held.

(1) Yes. As thus worded [in *Art VI, Sec 5(1)*], the Constitution did *not* preclude Congress from increasing its membership by passing a law, other than a general reapportionment law. This is exactly what was done by Congress in enacting RA 7854 and providing an increase in Makati's legislative district.

(2) No. Art VI, Sec 5(3) provides that a city with a population of at least 250k shall have at least one representative. Even granting that the population of Makati xxx stood at 450k, its legislative district may still be increased since it has met the minimum population requirement of 250k.

Only Congress may make major adjustments of the reapportionment of Legislative Districts.[59]

Montejo v. COMELEC

GR 118702, 242 SCRA 415 [Mar 16, 1995]

Facts. Biliran was originally a municipality of the 3rd District of the province of Leyte. It was later converted into a sub-province then a regular province. *COMELEC* sought to remedy the consequent inequality of the distribution of inhabitants, voters and municipalities in the province of Leyte by promulgating Resolution No. 2736 where it transferred (in Sec 1 thereof) the municipality of Capoocan of its 2nd District and Palompon of its 4th District to its 3rd District. Cong. *Montejo* of the 1st District of Leyte sought to annul said Sec of Res. No. 2736 on the ground that it violates the principle of equality of representation. To remedy the alleged inequity, he prays to transfer the municipality of Tolosa from his district to the 2nd District of the province.

Issue. May this Court transfer the Municipality of Tolosa of the 1st District to the 2nd District of Leyte as prayed for?

Held. No. The court held Sec 1 of Resolution No. 2736 void and conceded that the conversion of Biliran to a regular province brought about an imbalance in the distribution of voters in the legislative districts and, as such, could devalue a citizen's vote in violation of the equal protection clause of the Constitution. However, what is prayed for involves an *issue of reapportionment of legislative districts* and *remedy* for such *lies with Congress* in accordance to *Art VI, Sec 5(4).* While this Court can strike down an unconstitutional reapportionment, it cannot itself make the reapportionment as Montejo would want the Court to do by directing COMELEC to transfer Tolosa from the 1st District to the 2nd District. Transferring a municipality from one district to another is a substantive (not minor) change.

If an additional legislative district created within a city is not required to represent a population of at least 250k in order to be valid, neither should such be needed for an additional district in a province.

Aquino III v. COMELEC

GR 189793 [April 7, 2010]

Facts. There were originally 4 legislative districts in the Province of Camarines Sur, each having populations well over 250k. RA 9716 was enacted which reconfigured Cam Sur's first and second districts. Certain municipalities of the original first and second districts were combined form a new additional legislative district. Having resulted in a decrease in the population of the first district to 176,383, petitioners argue that RA 9716 is unconstitutional alleging that the minimum population of 250k is required for the creation of a new legislative district.

[59] COMELEC may make *minor* adjustments of the reapportionment of the Legislative Districts by authority of an Ordinance appended to the Constitution. Minor adjustments includes, for instance, the correction made for a municipality within the geographical area of one district that was forgotten or where there may be an error in the correct name of a particular municipality. What COMELEC can do is adjust the number of *members* (not municipalities) "apportioned to the province out of which such new province was created xxx" (*Montejo v. COMELEC*, GR 118702)

Issue. Is the population of 250k an indispensable constitutional requirement for the creation of a new legislative district in a province?

Held. No. In *Mariano, Jr. v. COMELEC,* 242 SCRA 211 (1995), the Court clarified that while Sec 5(3), Art VI of the Const. requires a city to have a minimum population of 250k to be entitled to a representative, it does not have to increase its population by another 250k to be entitled to an additional district. There is no reason why the Mariano case, which involves the creation of an additional district within a city, should not be applied to additional districts in provinces. Indeed, *if an additional legislative district created within a city is not required to represent a population of at least 250k in order to be valid, neither should such be needed for an additional district in a province,* considering moreover that a province is entitled to an initial seat by the mere fact of its creation and regardless of its population.[60]

The 20% allocation for party-list representatives provided in Sec 5(2), Art VI of the Constitution is only a ceiling; it is NOT mandatory to fill the entire 20% allocation.

The 3-seat limit imposed by RA 7941 was adopted to promote and encourage a multiparty system of representation.

Veterans Federation Party v. COMELEC
GR 136781 [Oct 6, 2000]

Facts. Following the May 1998 elections, respondent *COMELEC* proclaimed 14 party-list reps from 13 parties and organizations in accord with the 2% qualifying threshold vote in Sec 11(b) of RA 7941 and the principle of proportional representation of qualified parties. PAG-ASA party-list, which did not obtain the 2% qualifying vote, filed a petition with the COMELEC to fill up the 20% allocation for party-list reps provided by the Constitution (52 seats in the current Congress). COMELEC granted the petition and ordered the proclamation of herein 38 respondents party-list candidates which were next in rank to fill all 52 seats, ignoring the 2% qualifying threshold vote. The party-list candidates which obtained the 2% qualifying threshold vote now file the instant petitions. Though petitioners party-list candidates agree that the 20% allocation must be filled up, they aver that the remaining seats should be allocated to only them proportionally.

Issues.

(1) Is the 20% allocation for party-list representatives provided in Sec 5(2), Art VI of the Const. mandatory?
(2) Is the 2% threshold vote to qualify a party-list to congressional seats prescribed by Sec 11(b) of RA 7941[61] constitutional?
(3) Is the three-seat limit provided in the same Sec 11(b) of RA 7941 constitutional?
(4) How shall the seats for party-list representatives be allocated?[62]

Held.

(1) No. A simple reading of Sec 5, Art VI of the Const. easily conveys the message that Congress was vested with the broad power to define and prescribe the mechanics of the party-list system of representation. The Constitution explicitly sets down only the percentage of the total membership in the House of Reps reserved for party-list reps. In the exercise of its constitutional prerogative, Congress enacted RA 7941. *Considering the requirements under Sec 11(b) thereof, it will be shown presently that Sec 5(2), Art VI of the Const. is not mandatory. It merely provides a ceiling for party-list seats in Congress.*
(2) Yes.[63] In imposing a 2% threshold, Congress wanted to ensure that only those parties, organizations and coalitions having a sufficient

[60] The Court clarified that, plainly read, Sec 5(3), Art VI of the Const. requires a 250k minimum population only for a city to be entitled to a representative, but not so for a province. The use by the subject provision of a comma to separate the phrase "each city with a population of at least two hundred fifty thousand" from the phrase "or each province" point to no other conclusion than that the 250k minimum population is only required for a city, but not for a province. (*Aquino III v. COMELEC*, GR 189793 [2010])

[61] "The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats."

[62] The formulation of seat allocation for the party-list representatives set forth herein has been overruled in *BANAT v. COMELEC*, GR 179271 (2009). See next case digest.

[63] This has been overruled in *BANAT v. COMELEC*, GR 179271 (2009). See next case digest.

number of constituents deserving of representation are actually represented in Congress. This intent can be gleaned from the deliberations on the proposed bill. Even the framers of our Constitution had in mind a minimum-vote requirement, the specification of which they left to Congress to properly determine. The 2% threshold is consistent also with the very essence of "representation" [in a republican government]. To have meaningful representation [in a republican government], the elected persons must have the mandate of a sufficient number of people. Otherwise, the result might be the proliferation of small groups which are incapable of contributing significant legislation, and which might even pose a threat to the stability of Congress.

(3) Yes. An important consideration [taken by the framers of the Constitution] in adopting the party-list system is to promote and encourage a multiparty system of representation. Consistent therewith, Congress set the three-seat limit to ensure the entry of various interest-representations into the legislature; thus, no single group, no matter how large its membership, would dominate the party-list seats, if not the entire House.

(4) The initial step is to rank all the participating parties, organizations and coalitions from the highest to the lowest based on the number of votes they each received. Then the ratio for each party is computed by dividing its votes by the total votes cast for all the parties participating in the system. All parties with at least 2% of the total votes are guaranteed one seat each. Only these parties shall be considered in the computation of additional seats. The party receiving the highest number of votes shall thenceforth be referred to as the *first party*.

The next step is to determine the number of additional seats the first party is entitled to, in order to be able to compute that for the other parties. If the proportion of votes received by the first party relative to the total votes for the party-list system without rounding it off is equal to at least 6%, then the first party shall be entitled to 2 additional seats or a total of 3 seats overall. If the proportion of votes without a rounding off is equal to or greater than 4%, but less than 6%, then the first party shall have 1 additional or a total of 2 seats. And if the proportion is less than 4%, then the first party shall not be entitled to any additional seat.

The next step is to solve for the number of additional seats that the other qualified parties (parties garnering at least 2% of the votes for the party-list system) are entitled to. This is equal to the product of the number of additional seats allocated to the first party and the proportion of the number of votes of the concerned party relative to the number of votes of the first party.[64]

The 2% threshold vote for <u>additional</u> seats in RA 7941, Sec 11(b) is UNconstitutional.

How the seats for party-list representatives are to be allocated.

BANAT v. COMELEC
GR 179271 [Apr 21, 2009]

Facts. Following the May 2007 elections, petitioner Barangay Association for National Advancement and Transparency (*BANAT*) filed before respondent *COMELEC* a petition to proclaim the full number of party-list representatives provided by the Constitution, i.e. 20% of the total number of representatives (55 seats in the current Congress). Meanwhile,

[64] *N.B.* This formulation of seat allocation for the party-list representatives has been overruled in *BANAT v. COMELEC*, GR 179271 (2009). See next case digest. However, BANAT v. COMELEC upheld the following ruling in this *Veterans* case:

To determine the winners in a party-list election, the Constitution and RA 7941 mandate at least 4 inviolable parameters:

(1) *The 20% allocation* – the combined number of *all* party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list;

(2) *The 2% threshold* – only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a [guaranteed] seat in the House of Representatives;

(3) *The 3-seat limit* – each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats; and

(4) *Proportional representation* – the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes. (*Veterans Federation Party v. COMELEC*, GR 136781 [2000])

COMELEC promulgated Resolution No. 07-60 proclaiming all party-list candidates garnering at least 2% of the total party-list votes (13 party-list candidates). COMELEC *en banc* thus declared the BANAT's petition moot and academic and declared further that the total number of seats of each winning party-list will be resolved using the *Veterans* ruling.[65] BANAT then filed a petition before the SC assailing said resolution of the COMELEC.

In the other petition, petitioners party-list candidates Bayan Muna, Abono, and A Teacher assail the validity of the Veterans formula.

Issues.

(1) Is the 20% allocation for party-list representatives provided in Sec 5(2), Art VI of the Const. mandatory?
(2) Is the three-seat limit provided in Sec 11(b) of RA 7941 constitutional?
(3) Is the 2% threshold vote to qualify a party-list to congressional seats prescribed by the same Sec 11(b) of RA 7941 constitutional?
(4) How shall the seats for party-list representatives be allocated?
(5) May major political parties participate in the party-list elections?

Held.

(1) No. The 20% allocation of party-list representatives is merely a ceiling; party-list representatives cannot be more than 20% of the members of the House of Representatives. Neither the Constitution nor RA 7941 mandates the filling-up of the entire 20% allocation of party-list representatives found in the Constitution. The Constitution, in Sec 5(1) of Art VI, left the determination of the number of the members of the House of Representatives to Congress.
(2) Yes. The three-seat cap, as a limitation to the number of seats that a qualified party-list organization may occupy, is a valid statutory device that prevents any party from dominating the party-list elections.
(3) Yes, as to the guaranteed seats; but no, as to the additional seats. *The 2% threshold vote for additional seats makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50*. The continued operation of the 2% threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives. It presents an unwarranted obstacle to the full implementation of Sec 5(2), Art VI of the Const. and prevents the attainment of "the broadest possible representation of party, sectoral or group interests in the House of Representatives."[66]
(4) In determining the allocation of seats for party-list representatives under Sec 11 of RA 7941, the following procedure[67] shall be observed:
    4.1 The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
    4.2 The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to *one* guaranteed seat each.
    4.3 Those garnering sufficient number of votes, according to the ranking in 4.1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.
    4.4 Each party, organization, or coalition shall be entitled to not more than three (3) seats.

In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two-percenter. Thus, the remaining available seats for allocation as "additional seats" are the maximum seats reserved under the Party List System less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in RA allowing for a rounding off of fractional seats.[68]

In declaring the 2% threshold unconstitutional, we do not limit our allocation of additional seats to the two-percenters. The percentage of votes garnered by each party-list candidate is arrived at by dividing the number of votes garnered by each party by the total number of votes cast for party-list candidates. There are two steps in the second round of seat allocation. First, the percentage is multiplied

[65] *Ibid.*

[66] RA 7941, Sec 2. *Declaration of Policy*

[67] See *Appendix D*, p. 178, for the simplified step-by-step procedure for allocation of party list seats

[68] For illustrative example of the procedure for the allocation of seats, see *Table 3* in *BANAT v. COMELEC,* GR 179271 [2009].

by the remaining available seats. The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled.

(5) No. By a vote of 8-7, the Court decided to continue to disallow major political parties from participating in the party-list elections, directly or indirectly. Notably however, neither the Constitution nor RA 7941 prohibit major political parties from participating in the party-list system. On the contrary, the framers of the Constitution clearly intended the major political parties to participate in party-list elections through their sectoral wings.

Political parties—even major ones—may participate in the party-list elections.[69]

To allow the non-marginalized or overrepresented to participate in the party-list elections desecrates the spirit of the party-list system.

Guidelines for screening party-list participants.

Ang Bagong Bayani-OFW Labor Party v. COMELEC
GR 147589 [June 26, 2001]

Facts. In connection with the oncoming May 2001 elections, COMELEC issued a resolution which approved the participation of 154 organizations and parties in the party-list elections. Petitioners party-list participants seek the disqualification of respondents party-list participants, arguing mainly that the party-list system was intended to benefit the marginalized and underrepresented; not the mainstream political parties, and the non-marginalized or overrepresented which the respondents allegedly are or to which they allegedly belong.

*Issue*s.

(1) May political parties participate in party-list elections?

(2) Is the party-list system exclusive to "marginalized and underrepresented" sectors and organizations?

(3) What are the guidelines for screening party-list participants?

Held.

(1) Yes. Sec 5, Art VI of the Const. provides that members of the House of Reps may "be elected through a party-list system of registered national, regional, and sectoral parties or organizations." Furthermore, under Secs 7 and 8, Art IX(C) of the same,[70] political parties may be registered under the party-list system. This is clear also from the deliberations of the Const. Commission. Indubitably, therefore, *political parties—even the major ones—may participate in the party-list elections*.

(2) Yes. The intent of the Constitution is clear: to give genuine power to the people, not only by giving more law to those who have less in life, but more so by enabling them to become veritable lawmakers themselves. Consistent with this intent, the policy of the implementing law, RA 7941, is likewise clear: "to enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, x x x, to become members of the House of [Reps]."[71] Where the language of the law is clear, it must be applied

[69] *N.B.* This ruling is contrary to the ruling in *BANAT v. COMELEC, supra*., which is later in date. See previous case digest, issue (5).

[70]

"Sec. 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

"Sec. 8. Political parties, or organizations or coalitions registered under the party-list system, shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law."

[71] Sec 2, RA 7941 mandates a state policy of promoting *proportional representation* by means of the party-list system, which will "enable" the election to the House of Reps of Filipino citizens:

according to its express terms. *To allow the [non-marginalized or overrepresented] to participate desecrates the spirit of the party-list system.*[72]

(3) The Court remanded the case to the COMELEC to determine whether the 154 organizations and parties allowed to participate in the party-list elections comply with the requirements of the law, issuing the following guidelines:

i. The registrant must represent the marginalized and underrepresented groups identified in Sec 5 of RA 7941.[73] It must show thus—through its constitution, articles of incorporation, by laws, history, platform of government and track record—that it represents and seeks to uplift marginalized and underrepresented sectors. Verily, majority of its membership should belong to the marginalized and underrepresented. And it must demonstrate that in a conflict of interests, it has chosen or is likely to choose the interest of such sectors.

ii. While even major political parties are allowed to participate in the party-list system, they must show, however, that they represent the interests of the marginalized and underrepresented as well.

iii. While the religious sector may not be represented in the party-list system, priests, imams, pastors and the like are not prohibited from representing (from being the nominee for) otherwise qualified sectors.

iv. A party or an organization must not be disqualified under Sec 6 of RA 7941.

v. The party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government.[74]

vi. The party must not only comply with the requirements of the law; its nominees must likewise do so. Hence, its nominees must be qualified under Sec 9 of RA 7941.

vii. Not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees.

viii. While lacking a well-defined political constituency, the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.

Having complied with the requirements of the Constitution and RA 7941, to deny Ang Ladlad, which represents the LGBT sector, accreditation as a party-list organization on the ground of sexual immorality is violative of the non-establishment clause, the equal protection clause, the freedom of expression and association, and is incongruous with our international obligation to protect and promote human rights.

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a. who *belong to marginalized and underrepresented* sectors, organizations and parties; and
b. who *lack well-defined constituencies*; but
c. who *could contribute to the formulation and enactment of appropriate legislation* that will benefit the nation as a whole. (*Ang Bagong Bayani-OFW Labor Party v. COMELEC*, GR 147589 [2001])

[72] The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. It intends to make the marginalized and the underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of representative democracy. Thus, allowing all individuals and groups, including those which now dominate district elections, to have the same opportunity to participate in party-list elections would desecrate this lofty objective and mongrelize the social justice mechanism into an atrocious veneer for traditional politics. (*Ibid.*)

[73] *N.B.* the Court ruled, however, that Sec 5 of RA 7941 is *not* an exclusive list of the marginalized and underrepresented groups but the kind of sector sought to be represented should be limited, qualified or specialized by the enumeration. (*Id.*)

[74] By the very nature of the party-list system, the party or organization must be a group of citizens, organized by citizens and operated by citizens. It must be independent of the government. The participation of the government or its officials in the affairs of a party-list candidate is not only illegal and unfair to other parties, but also deleterious to the objective of the law: to enable citizens belonging to marginalized and underrepresented sectors and organizations to be elected to the House of Reps. (*Id.*)

Ang Ladlad LGBT Party v. COMELEC

GR 190582 [Apr 8, 2010]

Facts. Petitioner *Ang Ladlad* represented itself as a national lesbian, gay, bisexual and transgender (LGBT) umbrella organization with affiliates around the Phils. composed of numerous LGBT networks throughout the country. It alleged that the LGBT community in the Phils. was estimated to constitute at least 670k persons. It applied for accreditation as a party-list organization with respondent *COMELEC* in 2006 but was denied, and again in 2009—also denied.

In its resolution denying the latter application, COMELEC cited the following grounds: Ang Ladlad tolerates sexual immorality, citing provisions of the Bible and the Koran. Ang Ladlad collides with Arts 695,[75] 1306[76] and 1409[77] of the Civ Code, and Art 201 of the RPC.[78] The LGBT sector is not enumerated in the Constitution and RA 7941. To accredit Ang Ladlad would be to expose our youth to an environment that does not conform to the teachings of our faith.

Ang Ladlad claims compliance with the 8-point guidelines enunciated in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*. Ang Ladlad argues that the LGBT community is a marginalized and underrepresented sector that is particularly disadvantaged because of their sexual orientation and gender identity.

Issue. Should Ang Ladlad's application for accreditation be denied?

Held. No. *Ang Ladlad complied with the requirements of the Constitution and RA 7941.* The enumeration of marginalized and under-represented sectors [in the Constitution and RA 7941] is *not* exclusive. Taking note of the size of the LGBT sector and the extensive affiliation of Ang Ladlad, the Court ruled that Ang Ladlad sufficiently demonstrated its compliance with the legal requirements for accreditation.

It was grave *violation of the non-establishment clause* for the COMELEC to utilize the Bible and the Koran to justify the exclusion of Ang Ladlad. Morality referred to in the law is public and necessarily secular, not religious. Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require compel the non-believers to conform to a standard of conduct buttressed by a religious belief, anathema to religious freedom. Likewise, the government would thereby tacitly approve or endorse that belief and also tacitly disapprove contrary religious or non-religious views that would not support the policy. On the other hand, COMELEC has failed to explain what societal ills are sought to be prevented, or why special protection is required for the youth. Neither has the COMELEC condescended to justify its position that petitioner's admission into the party-list system would be so harmful as to irreparably damage the moral fabric of society.

COMELEC's reference to purported violations of our penal and civil laws is flimsy, at best; disingenuous, at worst. The remedies for which are a prosecution under the RPC or any local ordinance, a civil action, or abatement without judicial proceedings [and not denial of accreditation].

In ruling for the accreditation Ang Ladlad, the Court further cited the equal protection clause, the guarantees of freedom of expression and association, and our international obligation to protect and promote human rights.[79]

[75] "Any act, omission, establishment, business, condition of property, or anything else which x x x (3) shocks, defies; or disregards *decency or morality* x x x"

[76] "Contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not x x x *morals, good customs*, x x x "

[77] "Contracts whose cause, object or purpose is contrary x x x *morals, good customs* x x x" are inexistent and void from the beginning

[78] penalizes immoral doctrines, obscene publications and exhibitions and indecent shows

[79] *Equal protection clause*. [Ang Ladlad, which represents the LGBT sector,] has the same interest in participating in the party-list system on the same basis as other political parties similarly situated. Laws of general application should apply with equal force to LGBTs, and they deserve to participate in the party-list system on the same basis as other marginalized and underrepresented sectors. We are not prepared to single out homosexuals as a separate class meriting special or differentiated treatment.

Freedom of expression. This freedom applies not only to those that are favorably received but also to those that offend, shock, or disturb. Any restriction imposed in this sphere must be proportionate to the legitimate aim pursued. Absent any compelling state interest, it is not for the COMELEC or this Court to impose its views on the populace. COMELEC is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one.

QUALIFICATIONS of the Members of the House of Representatives Art. VI, Sec 6.

For purposes of the Election law, "residence" is the same as "domicile". Successfully changing residence requires an actual and deliberate abandonment of the old one.

Romuldez-Marcos v. COMELEC
GR 119976, 248 SCRA 300 [Sept 18, 1995]

Facts. Petitioner Imelda *Marcos*, whose alleged legal residence is in Tacloban, Leyte, ran for Congress representing the 1st district of Leyte. Her adversary, Montejo, sought to disqualify her candidacy on the ground that, among others, she is not a resident of at least 1 year of Tacloban and therefore she did not satisfy the residency requirement mandated by *Art VI, Sec 6* of the Constitution as she in fact wrote in her Certificate of Candidacy that she resided "in the constituency where" she sought "to be elected" for only "seven months". She later claimed it to be an honest mistake brought about by confusion and asserted that it is in fact her domicile "since childhood". However, *COMELEC* resolved in favor of Montejo and contended that Imelda's domicile ought to be any place where she lived in the last few decades except Tacloban. In its resolution, COMELEC cited San Juan, Metro Mla. and San Miguel, Mla. as places where she resided and served certain positions. Mention was even made of her residence in Malacañang and Honolulu, Hawaii.

Issue. Is Tacloban, Leyte the legal residence of Imelda thereby satisfying the residence requirement mandated by Art VI, Sec 6 of the Constitution?

Held. Yes. The honest mistake in the Certificate of Candidacy regarding the period of residency does not negate the fact of residence if such fact is established by means more convincing than a mere entry on a piece of paper. It is settled that when the Constitution speaks of "residence" in election law, it actually means only "domicile." It was held that Tacloban, Leyte was in fact the domicile of origin of Imelda by operation of law for a minor follows the domicile of her parents (which was the same). In its Resolution, *COMELEC was obviously referring to* Imelda's various places of *actual residence*, not her domicile (legal residence). An individual does not lose her domicile even if she has lived and maintained residences in different places. *Successfully changing residence requires an actual and deliberate abandonment*,[80] and Imelda has clearly always chosen to return to her domicile of origin. Even at the height of the Marcos Regime's powers, she kept her close ties to her domicile of origin by establishing residences in Tacloban, celebrating important personal milestones there, instituting well-publicized projects for its benefit and establishing a political power base where her siblings and close relatives held positions of power always with either her influence or consent.

In the absence of clear and positive proof of successful abandonment of domicile, it shall be deemed continued.

Aquino v. COMELEC
GR 120265, 248 SCRA 400 [Sept 18, 1995]

Facts. Petitioner *Aquino* was a resident of Concepcion, Tarlac for over 50 years. He, in fact, indicated in his Certificate of Candidacy for the 1992 congressional elections that he was a resident of thereof for 52 years immediately preceding that election. His birth certificate also places Concepcion, Tarlac as the birthplace of both his parents.

Freedom of association. A political party may campaign for a change in the law or the constitutional structures of a state if it uses legal and democratic means and the changes it proposes are consistent with democratic principles.

International obligation to protect and promote human rights. The principle of non-discrimination enunciated in the UDHR and the ICCPR requires that laws of general application relating to elections be applied equally to all persons, regardless of sexual orientation. The right of every citizen to electoral participation without unreasonable [distinctions and] restrictions lies at the core of democratic government. (*Ang Ladlad LGBT Party v. COMELEC*, GR 190582 [2010])

[80] To successfully effect a *change in domicile*, one must demonstrate: (1) actual removal or an *actual change* of domicile, (2) a bona fide *intention of abandoning* the former place of residence *and establishing a new one*; and (3) *acts which correspond* with the purpose (*Marcos v. COMELEC*, 248 SCRA 331)

For the 1995 elections, Aquino ran for the Congress representing the new 2nd district of Makati City. He stated in his Certificate of Candidacy that he has resided "in the constituency where" he sought "to be elected" for only "10 months." He in fact has just transferred to a leased condominium in Makati from his residence in Tarlac. Private respondents filed a petition to disqualify him on the ground that he lacked the residence qualification as a candidate for congressman mandated in *Art VI, Sec 6* of the Constitution. The following day, Aquino amended his Certificate of Candidacy, indicating he has been a resident in said place for 1 year and 13 days. Meanwhile, elections were held and he garnered the highest number of votes. However, *COMELEC*, acting on the private respondents' petition, suspended his proclamation permanently. Hence this instant petition for certiorari.

Issue. Did Aquino satisfy the constitutional residence requirement in the 2nd district of Makati City as mandated by Art VI, Sec 6?

Held. No. *The essence of representation is to place through the assent of voters those most cognizant and sensitive to the needs of a particular district.* Clearly, Aquino's domicile of origin was Concepcion, Tarlac, and the same is not easily lost. That coupled with the fact that Aquino himself claims to have other residences in Metro Mla. and that he claims to be resident of the condominium unit in Makati for only a short length of time "indicate that" his "sole purpose in transferring his physical residence" is not to acquire a new residence of domicile "but only to qualify as a candidate for Representative of the 2nd district of Makati City." The absence of clear and positive proof showing a successful abandonment of domicile under the conditions stated above, the lack of identification—sentimental, actual or otherwise—with the area, and the suspicious circumstances under which the lease agreement [of the condominium unit in Makati (instead of buying one)] was effected all belie his claim of residency for the period required by the Constitution.

It is not required that a person should have a house in order to establish his domicile because that would tantamount to a property qualification.

Co v. HRET

GR 92191-92, 199 SCRA 692 [Jul 30, 1991]

Facts. Respondent Ong was proclaimed the duly elected representative of the 2nd district of Northern Samar. His adversaries, which include petitioners *Co et al.*, filed election protests against him averring that he is not a natural-born citizen of the Phils. and that he is not a resident of the 2nd district of Northern Samar and therefore he did not satisfy the qualification for representatives mandated in *Art VI, Sec 6* of the Constitution. It is argued that Ong does not even have real properties in that district. Respondent *HRET* found for Ong, hence his petition for certiori.

Ong was born of a natural-born citizen mother and a Chinese father who was later naturalized while Ong was a minor. Ong was born in the said district of Samar and grew up there. Their house was twice burned and, in both times, they rebuilt their residence in the same place. After elementary, he pursued his studies in Mla. and practiced his profession as CPA in the Central Bank of the Phils. Later, he engaged himself in the management of the family business in Mla. He married a Filipina. In between, he made periodical journeys back to his home province. However, Ong does not have property in the district.

Issues.

(1) Is Ong a naturally-born Filipino citizen?

(2) Is Ong a resident of the 2nd district of Northern Samar?

Held.

(1) Yes. When Ong's father was naturalized, Sec 15 of the Revised Naturalization Act squarely applies its benefit to him for he was then a minor residing in this country. Thus, it was the law itself which elected Philippine citizenship to him when he was only 9. Election through a sworn statement when he turned 21 (age of majority) would have been an unusual and unnecessary procedure for one who is already a Filipino citizen. Moreover, formal declaration is a requirement for those who still have to elect citizenship. For those already Filipinos, when the time to elect came up, there are acts of deliberate choice which cannot be less binding and, in this case, Ong's establishment of his life here are themselves formal manifestations of choice.

(2) Yes. The domicile of origin of Ong, which was the domicile of his parents, is fixed at Laoang, Samar (in the district). Although no merit was found in the petitioners' argument that Ong does not even have property in the district, the Court nonetheless held, for the sake of argument, that did it is *not required that a person should have a house in order to establish his residence and domicile because that would*

tantamount to a property qualification. It is enough that he should live in the municipality. Although he studied in Manila and practiced his profession therein, the periodical journeys made to his home province reveal that he always had the *animus revertendi*.

TERM of the Members of the House of Representatives
Art VI, Sec 7.

"Term" of office is different from "tenure" of office.

Dimaporo v. Mitra
GR 96859, 202 SCRA 779 [Oct 15, 1991]

Facts. Petitioner incumbent Rep. *Dimaporo* of Lanao del Sur filed on Jan 15, 1990 for Certificate of Candidacy for the position of Regional Governor of the ARMM. Respondent Speaker *Mitra* and the Sec. of the House then excluded Dimaporo's name from its Roll of Members xxx, considering him permanently resigned from his office upon filing of his Certificate of Candidacy pursuant to the Omnibus Election Code (BP 881) Art IX, Sec 67 which states "any elective official xxx running for any office other than the one which he is holding in a permanent capacity except for the Pres. and VP shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy. Having lost in the election, Dimaporo expressed his intention "to resume performing" his "duties as elected Member of Congress" but he failed his bid hence this petition. He argues that Sec 67, Art IX of BP 881 is unconstitutional in that it provides for the shortening of a congressman's term of office on a ground not provided for in the Constitution.

Issue. Does Sec 67, Art IX of BP 881 shorten a term of a congressman by means other than that provided in the Constitution?

Held. No. Dimaporo seems to confuse "term" with "tenure" of office. The *term of office* prescribed by the Constitution *may not be extended or shortened by the legislature*, *but the period during which an officer actually holds the office (tenure)*, *may be affected by circumstances* xxx. Under the questioned provision, when an elective official covered thereby files a certificate of candidacy for another office, he is deemed to have voluntarily cut short his tenure not his term. The term remains xxx. Forfeiture is automatic and permanently effective upon the filing of the certificate of candidacy for another office xxx. It is not necessary that the other position be actually held. The ground for forfeiture in Sec 13, Art VI of the Constitution is different from the forfeiture decreed in Sec 67, Art. IX of BP, Blg. 881, which is actually a mode of voluntary renunciation of office under Sec 7(2) of Art VI of the Constitution. Petition dismissed.

PARLIAMENTARY IMMUNITIES
Art VI, Sec 11.

To avail of the privilege of speech and debate, remarks should be made (1) while in session and (2) in the discharge of official duties.

Jimenez v. Cabangbang
No. L-15905, 17 SCRA 876 [Aug 3, 1966]

Facts. Respondent *Cabangbang* was a congressman when he wrote an open letter to the President and caused the same to be published in several newspapers of general circulation. The letter allegedly maligned several officials of the AFP, including petitioners Col. *Jimenez et al.*, associating them in purported operational plans for a coup d'état. Jimenez et al. instituted this present action for recovery of damages for libel against Cabangbang. In his defense, Cabangbang invoked parliamentary immunity averring the letter is a privileged communication under *Art VI*, *Sec 15 (now 11*) of the Constitution.

Issue. Is the letter in question a privileged communication protected by Art VI, Sec 15 (now 11) of the Constitution?

Held. No. "Speech or debate therein (in Congress)" used in Art VI Sec 15 (now sec 11) of the Constitution, refers to utterances made by Congressmen in the performance of their official functions while Congress is in session. The open letter to the president was made by Cabangbang when Congress was not in session. And in causing the communication to be so published, Cabangbang was not performing his official duty xxx as a Member of Congress. Hence, the communication is not absolutely privileged.

Parliamentary immunity protects the legislator outside Congressional Halls but not inside.

Osmeña v. Pendatun
No. L-17144, 109 Phil 863 [Oct 28, 1960]

Facts. Petitioner Rep. *Osmeña*, in a privilege speech delivered before the House, made serious imputations of bribery against the President. Because of that, a special committee was created by the House to investigate the truth of the charges against the President. When asked to produce evidence to substantiate his imputations against the President, he refused. Having made said charges and for failing to produce evidence in support thereof, Osmeña was, by resolution, suspended from office for a period of 15 months for serious disorderly behavior. Osmeña now prays for the annulment of the resolution on the ground of infringement of his parliamentary immunity.

Issues.

(1) Does the House resolution infringe the parliamentary immunity (privilege of speech and debate) of Osmeña?
(2) Can the House of Representatives punish its members for disorderly behavior?

Held.

(1) No. Parliamentary immunity guarantees the legislator complete freedom of expression without fear of being made responsible in criminal or civil actions before the courts or any other forum *outside* of the Congressional Hall. But is does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming a member thereof.
(2) Yes. For unparliamentary conduct, members of Congress could be censured, committed to prison, or even expelled by the votes of their colleagues.

Unworthy purpose or falsity and mala fides in uttering a statement by the member of Congress on the congressional floor does NOT destroy the privilege of parliamentary immunity

Pobre v. Defensor-Santiago
AC No. 7399 [Aug 25, 2009]

Facts. In a speech delivered on the Senate floor, respondent Sen. Miriam *Defensor-Santiago*, a member of the IBP, uttered the following: "x x x I am not angry. I am irate. I am foaming in the mouth. I am homicidal. I am suicidal. I am humiliated, debased, degraded. And I am not only that, I feel like throwing up to be living my middle years in a country of this nature. I am nauseated. I spit on the face of [C.J.] Artemio Panganiban and his cohorts in the [SC], I am no longer interested in the position [of C.J.] if I was to be surrounded by idiots. I would rather be in another environment but not in the SC of idiots x x x". Complainant *Pobre* asks that disciplinary action be taken against the Senator for her total disrespect towards then C.J. Panganiban and other members of the SC which Pobre believes constituted direct contempt of court. The Senator invokes parliamentary immunity under Sec 11, Art VI of the Constitution.

Issue. May disciplinary action be taken against Sen. Defensor-Santiago?

Held. No. Any claim of an unworthy purpose or of the falsity and *mala fides* of the statement uttered by the member of the Congress does not destroy the privilege [of parliamentary immunity]. The disciplinary authority of the assembly, not the courts, can properly discourage or correct such abuses committed in the name of parliamentary immunity.

The Court is not hesitant to impose some form of disciplinary sanctions on Senator/Atty. Santiago for what otherwise would have constituted an act of utter disrespect on her part towards the Court and its members. The factual and legal circumstances of this case, however, deter the Court from doing so, even without any sign of remorse from her. Basic constitutional consideration dictates this kind of disposition.[81]

[81] The Court, however, made the following pronouncement:

We, however, would be remiss in our duty if we let the Senator's offensive and disrespectful language that definitely tended to denigrate the institution pass by. It is imperative on our part to re-instill in Senator/Atty. Santiago her duty to respect courts of justice, especially this Tribunal, and remind her anew that the *parliamentary non-accountability thus granted to members of Congress is not to protect them against prosecutions for their own benefit, but to enable them, as the people's representatives, to perform the functions of their office without fear of being made responsible before the courts or other forums outside the congressional*

INCOMPATIBLE AND FORBIDDEN OFFICES
Art VI, Sec 13.

Faberes v. Abad
Case No. 48, 1 HRET 421 [Feb 1, 1990]

Facts. Protestant *Faberes* seeks the unseating of protestee *Abad* on the ground of irregularities in the latter's proclamation and commission by him of certain prohibited election acts that have disqualified him for the position of Representative for the lone district of Batanes. However, after the hearing of the protest and after the parties were required to submit their respective memoranda, an important development later supervened, to wit, Abad's appointment as Secretary of Agrarian Reform and his qualification in the new position.

Issue. By taking oath as the Sec of Agrarian Reform, did protestee forfeit his seat in the House of Representatives?

Held. Yes. With the protestee's appointment as Sec of Agrarian Reform and his qualification in the new position, he is now deemed to have forfeited the contested seat in the House of Representatives effective on the date he took his oath of office as Sec of Agrarian Reform. xxx By force of the constitutional inhibition against the holding of two lucrative offices by the same person at the same time, the acceptance of and qualification for a second office incompatible with the precedent one *ipso facto* vacates the precedent office; xxx.

When a public official voluntarily accepts an appointment to an office newly created or reorganized by law, which new office is incompatible with the one formerly occupied by him xxx he is deemed to have abandoned the office he was occupying by virtue of his former appointment.

hall. It is intended to protect members of Congress against government pressure and intimidation aimed at influencing the decision-making prerogatives of Congress and its members. (*Pobre v. Defensor-Santiago*, AC No. 7399 [2009])

Zandueta v. De la Costa
No. L-46267, 66 Phil 615 [Nov 28, 1938]

Facts. Petitioner *Zandueta* was discharging the office of judge of first instance, and was presiding over the 5th Branch of the CFI of Manila. When the judiciary was reorganized pursuant to CA No. 145 (the Judicial Reorganization Act), Zandueta received a new *ad interim* appointment as judge of first instance with authority to preside over the CFI of Manila and Palawan. After taking his new oath, Zandueta performed several acts pertaining to the office. Meanwhile, the CA disapproved his *ad interim* appointment. The President then appointed respondent *De la Costa* as judge of first instance with authority to preside over the 5th Branch of the CFI of Manila and Palawan, and his appointment was approved by CA. Zandueta now prays to declare De la Costa to be illegally occupying the office of judge of the 5th Branch of the CFI of Manila, and himself to be entitled to continue occupying said office.

Issue. Is Zandueta entitled to repossess the office occupied by him under his former appointment?

Held. No. There is incompatibility between his former and latter appointments; consequently, he is deemed to have abandoned the office he was occupying by virtue of his former appointment. The territory over which Zandueta could exercise and did exercise jurisdiction by virtue of his latter appointment is wider than that over which he could exercise and did exercise jurisdiction by virtue of his former appointment. Hence, there is incompatibility between the two appointments. In accepting the latter appointment and qualifying for the exercise of the functions of the office conferred by it, by taking the necessary oath, and in discharging the same, disposing of both judicial and administrative cases corresponding to the CFI of Manila and of Palawan, Zandueta abandoned[82] his former appointment,

[82] xxx When a public official voluntarily accepts an appointment to an office newly created or reorganized by law, which new office is incompatible with the one formerly occupied by him, qualifies for the discharge of the functions thereof by taking the necessary oath, and enters into the performance of his duties by executing acts inherent in said newly created or reorganized office and receiving the corresponding salary, he will be considered to have abandoned the office he was occupying by virtue of his former appointment, and he cannot question the constitutionality of the law by virtue of which he was last appointed. He is

and ceased in the exercise of the functions of the office occupied by him by virtue thereof.

INHIBITIONS and DISQUALIFICATIONS of House Members
Art VI, Sec 14.

Members of Congress may not personally appear as counsel before an administrative body, whether directly or indirectly.

Puyat v. De Guzman, Jr.
No. L-51122, 113 SCRA 31 [Mar 25, 1982]

Facts. Assemblyman Fernandez moved to intervene for Acero et al. in a case before the Securities and Exchange Commission (SEC, an administrative body) involving an intra-corporate dispute with *Puyat* et al. regarding the election of the directors of International Pipe Industries (IPI, a private corporation). Puyat et al. objected, averring it is in violation of Art VIII, Sec 11 (*now art VI, sec 14*) of the Constitution which bars assemblymen from appearing as counsel before any administrative body. On the basis of ownership of 10 shares of stock of IPI, Fernandez alleged legal interest in the matter in litigation. In view thereof, SEC granted Fernandez the motion. Hence this petition. Reviewing the circumstances surrounding his purchase of the shares, it was noted that he had acquired the mere 10 shares out of 262,843 outstanding shares on May 30, 1979—after he has signified his intention to appear as counsel for Acero but was denied on constitutional ground, after the *quo warranto* suit had been filed by Acero et al. on May 25, and one day before the scheduled hearing of the case before the SEC on May 31.

Issue. Is Fernandez's intervention valid?

Held. No. Ordinarily, by virtue of the Motion for Intervention, Fernandez cannot be said to be appearing as counsel but theoretically appearing for the protection of his ownership of shares in respect of the matter in litigation. However, under the facts and circumstances immediately preceding and following his purchase of the shares, We are constrained to find that there has been an *indirect* "*appearance as counsel before xxx an administrative body.*" *That is circumvention of the Constitutional prohibition*.

excepted from said rule only when his non-acceptance of the new appointment may affect public interest or when he is compelled to accept it by reason of legal exigencies. (*Zandueta v. De la Costa*, 66 Phil 615)

HOUSE OFFICERS, HOUSE RULES, DISCIPLINE OF MEMBERS, THE HOUSE JOURNAL
Art VI, Sec 16.

"Majority" simply refers to the number more than half the total.

Constitution is silent on the manner of selecting officers other than the Senate President and House Speaker – Art VI, Sec 16 (1).

Santiago v. Guingona, Jr.
GR 134577, 298 SCRA 756 [Nov 18, 1988]

Facts. Upon opening its 1st regular session, the Senate held its election of officers. Sen. Fernan was declared duly elected Senate President. Thereafter, the Senate failed to arrive at a consensus on the matter of the Minority leader for which Sen. Tatad and Sen. *Guingona* of the PRP and Lakas-NUCD-UMDP[83] (both "minority" parties, LAMP being the "majority") respectively were being considered. After 3 session days of debate on the issue, Sen. Pres. Fernan formally recognized Sen. Guingona as minority leader upon receiving information that all Lakas-NUCD-UMDP senators signed in agreement for the latter. Sens. *Santiago* and Tatad of the PRP instituted this present petition for *quo warranto* alleging that Guingona had been usurping a position which, to them, rightfully belongs to Tatad. They assert the definition of "majority" in *Art VI, sec 16(1)* of the Constitution refers to a group of senators who (1) voted for the winning

[83] People's Reform Party and Lakas—National Union of Christian Democrats—United Muslim Democrats of the Philippines, respectively

Sen. Pres. and (2) accepted committee chairmanships, therefore those otherwise comprise the "minority." Accordingly, they are of the view that Guingona, having voted for Fernan (the elected Sen. President), belongs to the "majority." In view thereof, they assert Art VI, sec 16(1) has not been observed in the selection of the Minority Leader.

Issue. Did Guingona unlawfully usurp the position of Minority Leader in the view that Art VI, sec 16(1) of the Constitution was not observed?

Held. No. In dismissing the petition, he term *"majority" simply "means the number greater than half or more than half of any total"*. Art VI, sec 16(1) does not delineate who comprise the "majority" much less the "minority". Notably, *the Constitution* [in Art VI, sec 16(1)] is explicit on the manner of electing a Senate President and a House Speaker, it *is, however, dead silent on the manner of selecting the other officers* in both chambers of Congress. All that it says is that "each House shall choose such other officers as it may deem necessary." To our mind, the method of choosing who will be such other officers is merely a derivative of the exercise of the prerogative conferred [to the House] xxx. In the absence of constitutional or statutory guidelines xxx this Court is devoid of any basis upon which to determine the legality of the acts of the Senate relative thereto.

Majority of "all Members" means absolute majority. "A majority" of each House means simple majority, requiring a less number – Art VI, Sec 16 (2).

Avelino v. Cuenco

No. L-2821, 83 Phil 17 [Mar 4, 1949]

Facts. Senators Tañada and Sanidad filed a resolution enumerating charges against the petitioner Senate President *Avelino* and ordering an investigation thereof. During the session day when Sen. Tañada was supposed to have his privilege speech, all members of the Senate were present except two Senators (so that there were 22 in attendance out of the 24 members of the Senate).[84] When the session was called to order, Sen. Tañada repeatedly stood up to claim his right to deliver his one-hour speech but Sen. Pres. Avelino kept on ignoring him, and announced that he would order the arrest of anyone who would speak without being previously recognized. A commotion broke out. A move for adjournment was opposed. Suddenly, Sen. Pres. Avelino banged his gavel and walked out of the session hall followed by his followers (leaving only 12 senators in the hall). Thereafter, senators who remained went on with the session (so-called "rump session"), and voted to declare vacant the position of the Senate President and designated respondent Sen. *Cuenco* as the Acting Senate President. In this petition, Sen. Avelino prays for the Court to declare him the rightful Senate President and to oust respondent Sen. Cuenco.

Issues.

(1) Is the rump session a continuation of the morning session?

(2) Supposing the rump session was not a continuation of the morning session, was there a quorum when Sen. Avelino was ousted and Sen. Cuenca was elected as the Senate President?

Held.

(1) Yes. A minority of 10 senators may not, by leaving the Hall, prevent the other 12 senators from passing a resolution that met with their unanimous endorsement.

(2) Yes. In view of Sen. Confesor's absence from the country, for all practical considerations, he may not participate in the Senate deliberations. Therefore, an absolute majority of all the members of the Senate less one (23), constitutes constitutional majority of the Senate for the purpose of a *quorum*; that is, 12 senators in this case constitute a quorum.[85] Even if the 12 did not constitute a *quorum*, they could have ordered the arrest of one, at least, of the absent members. If one had been so arrested, there would be no doubt [that there is a quorum] then, and Sen. Cuenco would have been elected just the same inasmuch as, at most, only 11 will side with Sen. Avelino. It would be most injudicious [then] to declare the latter as the rightful President of the Senate.

[84] Sen. Sotto was confined in the hospital and Sen. Confesor was in the United States.

[85] When the Constitution declares that a majority of "each House" shall constitute a *quorum*, "the House" does not mean "all" the members. Even a majority of all the members may constitute "the House." There is a difference between a majority of "the House," the latter requiring less number than the first. (*Avelino v. Cuenco*, 83 Phil 17)

For unparliamentary conduct, members of Congress could be censured, committed to prison, even expelled by the votes of their colleagues.

Osmeña v. Pendatun
No. L-17144, 109 Phil 863 [Oct 28, 1960]
See under this section, p. 60, issue (2)

Paredes v. Sandiganbayan
GR 118364, [Aug 8, 1995]

Facts. Petitioner *Paredes* was formerly a Provincial Governor. While he was governor, charges of violations of RA 3019 (the Anti-Graft and Corrupt Practices Act) were filed against him before the Sandiganbayan. Subsequently, he was elected to Congress. During his second term in Congress, the Sandiganbayan imposed a preventive suspension on him pursuant to the anti-graft law. Paredes challenged the authority of the Sandiganbayan to suspend a representative. Paredes invokes Sec 16, Art VI of the Constitution which deals with the power of each House of Congress to *inter alia* "punish its Members for disorderly behavior" and "suspend or expel a Member" by a vote of two-thirds of all its Members subject to the qualification that the penalty of suspension, when imposed, should not exceed 60 days.

Issue. May the Sandiganbayan suspend Rep. Paredes?

Held. Yes. Paredes' invocation of Sec 16 (3), Art VI is unavailing, as it appears to be quite distinct from the suspension spoken of in Sec 13 of RA 3019, which is not a penalty but a preliminary preventive measure. Sec 13, RA 3019 is not being imposed on Paredes for misbehavior as a Member of the House of Representatives.

The law and jurisprudence make it the duty of the judiciary to take notice of the legislative journals in determining the question whether a particular bill became a law or not — Art VI, Sec 16 (4).

To inquire into the veracity of the journals of the Philippine Legislature, when they are clear and explicit, would be to violate the [doctrine of separation of powers].

United States v. Pons
No. L-11530, 34 Phil 729 [Aug 12, 1916]

Facts. Respondent *Pons* was one of the 3 persons charged of the crime of illegal importation of opium. Each of them was found guilty by the trial court and was sentenced to be confined in prison and to pay fines. Counsel for the petitioner then filed a motion alleging that the last day of the special session of the Phil. Legislature for 1914 was the 28th day of February and that Act No. 2381, under which Pons must be punished if found guilty, was not passed or approved on the 28th of February but on March 1 of that year, hence, the same is null and void. In fact, in the proclamation of the Governor-General, the last day of the special session was February 28. The Legislative journal, on the other hand, says that the Legislature actually adjourned at 12 midnight on February 28.

Issue. Should the court go beyond the recital of the legislative journal (and look into extraneous evidence) when it is clear and explicit?

Held. No. While holding that the law and jurisprudence make it the duty of the judiciary to take notice of the legislative journals in determining the question whether a particular bill became a law or not, the Court further held that: "from their very nature and object the records of the Legislature are as important as those of the judiciary, and to inquire into the veracity of the journals of the Philippine Legislature, when they are clear and explicit, would be to violate both the letter and the spirit of the organic laws by which the Philippine Government was brought into existence, to invade a coordinate and independent department of the Government, and to interfere with the legitimate powers and functions of the Legislature."

The enrolled bill is conclusive upon courts (over statements so entered in the Journal)[86] – Art VI, Sec 16 (4).

Casco Philippine Chemical Co., Inc. v. Gimenez
No. L-17931, 7 SCRA 347 [Feb 28, 1963]

[86] Except where the matter is required to be entered in the journal, e.g. yeas and nays on the final reading, or on any question at request (Phil Pol Law, by I. Cruz 2002, p. 137)

Facts. Central Bank issued a memorandum which fixed a uniform margin fee of 25% on foreign exchange transactions with exemptions to, among others, *urea formaldehyde*. Petitioner *Casco Phil. Chem. Co.* (Casco Co.) bought foreign exchange for the importation of urea *and* formaldehyde and paid margin fees. Relying on said memorandum, Casco Co. sought refund but was refused on the ground that urea and formaldehyde is not in accord to the provision "urea formaldehyde". Casco Co. argued however that Congress intended to exempt "urea" and "formaldehyde" claiming that the bill approved in Congress contained the conjunction "and" between the terms "urea" and "formaldehyde". In support, it cited the individual statements of the Members of the Congress before their respective Houses during the consideration of the bill.

Issue. Should "urea formaldehyde" as it was written in the final form of the memorandum (and the enrolled bill) be construed as "urea" and "formaldehyde" as it was allegedly approved in Congress?

Held. No. Individual statements made by Members of the House [documented in the Journal] do not necessarily reflect the view of the House. The *enrolled bill is conclusive upon the courts* as regards the tenor of the measure passed by Congress and approved by the President. If there has been any mistake in the printing of a bill xxx the remedy is by amendment or curative legislation, not by judicial decree.

The Court will not look into alleged inconsistencies of in the enactment of a statute when the enrolled bill and legislative journal both certify its validity.

Philippine Judges Association v. Prado
GR 105371, 227 SCRA 703 [Nov 11, 1993]
See under this section, p. 82, issue (2)

A legislative act will not be declared invalid for noncompliance with the rules of the House – Art VI, Sec 16 (3).

Arroyo v. De Venecia
GR 127255, 277 SCRA 268 [Aug 14, 1997]

Facts. HB 7198 was transmitted by the House of Reps to the Senate and was thereafter approved with amendments. Upon being sent back to the House of Reps, Rep. Albano moved to ratify the bicameral conference committee report. Dep. Speaker Daza approved Albano's motion after apparently hearing no objection thereto although petitioner Rep. *Arroyo* had in fact stood up and asked "What is that, Mr. Speaker?" at the instant. Notably, Arroyo did not request to be recognized in accordance to the House Rules. The Dep. Speaker then called the session adjourned upon Albano's motion notwithstanding the pending query of Arroyo. Petitioners aver these are violative of the Rules of the House and that RA 8240,[87] the law which evolved from HB 7198, is thereby null and void. Petitioners contend that the Rules embody the "constitutional mandate" in *Art. VI sec 16(3)* that "each House may determine the rules of its proceedings" and that consequently, violation of House rules is a violation of the Constitution itself.

Issue. Is RA 8240 unconstitutional because it was passed in violation of the Rules of the House?

Held. No. Arroyo did not have the floor when he just stood up without being recognized, so as a result, he was not heard. The Court finds no ground for holding that Congress committed a grave abuse of discretion in enacting RA 8240. Even assuming *arguendo* that petitioners' allegations are true, it is clear that what is alleged to have been violated in the enactment of RA 8240 are merely internal rules of procedure of the House rather than constitutional requirements. Jurisprudence, both here and abroad, xxx all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules xxx. *A legislative act will not be declared invalid for noncompliance to such.*

ELECTORAL TRIBUNAL, jurisdiction and composition
Art VI, Sec 17.

Independence and exclusive character of jurisdiction of electoral tribunal affirmed, having been conferred as sole[88] judge by the Constitution.

Robles v. HRET

[87] a law amending certain provisions of the NIRC by imposing sin taxes
[88] "sole" means the jurisdiction cannot be shared

GR 86647, 181 SCRA 780 [Feb 5, 1990]

Facts. *Robles* (protestee) and Santos (protestant), were candidates for the position of Congressman of the 1st district of Caloocan City. Robles was proclaimed winner. Santos filed an election protest and prayed for recounting of genuine ballots. Respondent *HRET* ordered in favor of Santos and commenced revision of ballots. Later, Santos filed a Motion to Withdraw Protest which HRET has not acted upon when he filed again a motion to recall and disregard it. Robles opposed it; however, HRET granted Santos' motion to disregard withdrawal and resolved to continue with revision of the ballots. Robles instituted this present petition for certiorari praying to restrain HRET. He contends that HRET lost its jurisdiction over the case when Protestant filed his Motion to Withdraw Protest, hence HRET acted without jurisdiction when it ordered resumption of revision of ballots.

Issue. Does HRET retain the jurisdiction to grant or deny Santos' Motion to Disregard Withdrawal Protest after Santos already filed a Motion to Withdraw Protest beforehand?

Held. Yes. The mere filing of the Motion to Withdraw Protest on the remaining uncontested precincts, without any action on the part of HRET did not divest the latter of jurisdiction xxx if only to insure that the Tribunal retains sufficient authority to see to it that the will of the electorate is ascertained. Jurisdiction, once acquired, is not lost upon instance of the parties, and continues until the case is terminated. To hold otherwise would permit a party to deprive the Tribunal of jurisdiction already acquired. Where the Court has jurisdiction over the subject matter, its orders upon all questions pertaining to the cause are orders within its jurisdiction however erroneous they may be; they cannot be corrected by certiorari. This rule more appropriately applies to HRET whose independence as a constitutional body [found in *Art VI, sec 17*] has time and again been upheld in many cases.

Angara v. Electoral Commission

No. 45081, 63 Phil 139 [Jul 15, 1936]

See under *SEPARATION of POWERS,* p. 40, issue (2)

Rule-making power is deemed to have necessarily flowed from the constitutional grant of exclusive power to the Electoral Tribunals.

Lazatin v. HRET

No. L-84297, 168 SCRA 391 [Dec 8, 1988]

Facts. In the 1987 elections, petitioner *Lazatin* was proclaimed Congressman-elect over Timbol for the 1st district of Pampanga. Timbol filed an election protest which, summarily, did not meet success leading him to file with *HRET*. Lazatin moved to dismiss the protest on the ground that it had been filed late under BP Blg. 881 (Omnibus Election Code). However, HRET ruled that the filing was on time in accordance with HRET rules. Lazatin now comes to this Court averring that HRET does not have jurisdiction of the protest filed because it has not acquired the same, the protest having been filed out of time under BP 881.

Issue. Does HRET have the jurisdiction over the filed election protest?

Held. Yes. The power of HRET, as the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Reps, to promulgate rules and regulations relative to matters within its jurisdiction, including the period for filing election protests before it, is beyond dispute. *Its rule-making power necessarily flows from the general power granted it by the Constitution*. Moreover, the use of the word "sole" [in *Art VI, Sec 17*] emphasizes the exclusive character of the jurisdiction conferred. This grant of power is "full, clear and complete" (*J.* Malcolm). Thus, in the absence of a clear showing of arbitrary and improvident use of power as to constitute denial of due process, the judgment rendered by HRET in the exercise of such sole power is beyond interference of this Court.

Abbas v. SET

No. L-83767, 166 SCRA 651 [Oct 27, 1988]

Facts. In the 1987 congressional elections, petitioners filed with respondent *SET* an election contest against 22 senators-elect of the LABAN coalition. All members of the legislative component of the SET at the time happened to be included in the senators assailed. Later, petitioners filed with SET a Motion for Disqualification or Inhibition of all senators-members thereof for the reason they are all interested parties (being respondents therein). SET denied the motion hence this petition. Contending that SET committed a grave abuse of discretion, petitioners argue that

considerations of public policy and the norms of fair play and due process imperatively require the mass disqualification sought, and propose to amend the Tribunal's rules as to permit the contest being decided by only 3 Members of the Tribunal.

Issue. Should the Senators-members be disqualified?

Held. No. The SET must continue taking cognizance of the case with its current Senators-members. Here is a situation which precludes the substitution of any Senator sitting in the Tribunal by any of his other colleagues without inviting the same objections to the substitute's competence. However, the amendment proposed would, in the context of the situation, leave the resolution of the contest to the only 3 Members, all Justices of this Court, who would remain whose disqualification is not sought. It is unmistakable that the "legislative component" [of the SET] cannot be totally excluded from participation in the resolution of senatorial election contest without doing violence to the spirit and intent of the Constitution. Thus, the proposed mass disqualification/inhibition, if sanctioned and ordered, would leave the Electoral Tribunal no alternative but to abandon a duty that no other court or body can perform. This, to the Court's mind, is the overriding consideration—that the Tribunal be not prevented from discharging a duty which it alone has the power to perform, the performance of which is in the highest public interest as evidenced by its being expressly imposed by no less than the fundamental law. Litigants must simply place their trust and hopes of vindication in the fairness and sense of justice of the Members of the Tribunal. The charge that SET gravely abused its discretion in its denial of the petition for [mass] disqualification/inhibition must therefore fail.

Electoral Tribunal – non-partisan court, nonpolitical body, completely independent.

Bondoc v. Pineda

GR 97710, 201 SCRA 792 [Sept 26, 1991]

Facts. In the 1987 elections, respondent *Pineda* of Laban ng Demokratikong Pilipino (LDP) was proclaimed winner over rival petitioner *Bondoc* of the Nacionalista Party (NP) for the position of Representative for the 4th District of Pampanga. Bondoc filed a protest with HRET and was proclaimed winner over Pineda after revision, reexamination and re-appreciation of the ballots. Among the members of the HRET who voted for proclamation of Bondoc was Rep. Camasura of the LDP. Declaring Camasura to have committed a complete betrayal of loyalty to LDP, he was expelled from the party and, upon the request of LDP, his election to the HRET was rescinded. The promulgation of Bondoc as winner was then cancelled due to the consequent lack of the required concurrence of 5 members of the Tribunal. Hence this petition.

Issue. May the House of Reps, at the request of a political party, change that party's representation in the HRET?

Held. No. The Electoral Tribunal was created to function as a nonpartisan court. To be able to exercise its exclusive jurisdiction, the tribunal must be independent. *Its jurisdiction xxx is not to be shared by it with the Legislature* nor with the Courts. They must discharge their functions with complete xxx independence—even independence from the political party to which they belong. Hence "disloyalty to party" and "breach of party discipline" are no valid grounds for the expulsion of a member of the tribunal. In expelling Rep. Camasura for having cast a "conscience vote", the House of Reps committed a grave abuse of discretion violative of the Constitution and thus the expulsion is null and void. To sanction such interference by the House of Reps in the work of the HRET, would reduce the it to a mere tool for the aggrandizement of the party in power.

Jurisdiction of the Electoral Tribunal – contests relating to the election, returns, and qualifications of their respective Members.

Chavez v. COMELEC

GR 105323, 211 SCRA 315 [Jul 3, 1992]

Facts. In the 1992 elections, *Francisco Chavez* ran for Senator. Few days before the election (May 5, 1992) a Melchor Chavez was disqualified from running for senator. *COMELEC* resolved to credit all "Chavez" votes in favor of petitioner Francisco and cancel the "Melchor Chavez" name in the list of qualified candidates. However, COMELEC failed to implement the resolution in time for election day. With the "Melchor Chavez" name still undeleted in the list of qualified candidates on election day, Francisco Chavez alleged that confusion arose nationwide. He claims the "Chavez" votes were either declared stray or invalidated by the Board of Election

Inspectors. He now prays to enjoin COMELEC to re-open the ballot boxes, scan for "Chavez" votes and credit the same in his favor.

Issue. May COMELEC act on Francisco's prayer?

Held. No. The jurisdiction that the COMELEC has is over pre-proclamation controversies. Such is not the case here firstly because pre-proclamation cases are not allowed for president, *senator* xxx and secondly because the case is not a pre-proclamation controversy. Pre-proclamation controversies are those that call for correction of "manifest errors in the certificates of canvass or election returns," i.e. questions on authenticity of the election returns canvassed. Francisco's prayer does not call for such but for the re-opening of the ballot boxes and appreciation of the ballots. Under the Constitution (*Art VI, Sec 17*), the proper recourse is to file a regular election protest with SET. As the authenticity of the election returns are not questioned, they must be considered valid for purposes of canvassing.

Pursuant to the doctrines of primary jurisdiction and of separation of powers, only if the House fails to comply with the directive of the Constitution on proportional representation of political parties can the party-list reps seek recourse to this Court under its power of judicial review.

Pimentel, Jr. v. HRET

GR 141489 [Nov 29, 2002]

Facts. Following the 1998 elections, the House of Reps (the House) constituted its HRET and Commission on Appointments (CA) contingent. Following the customary practice, the contingents to the HRET and the CA were nominated by their respective political parties. *The party-list groups did not nominate any of their reps to the HRET or the CA*. Thus, the HRET and CA contingents were composed solely of district reps. Petitioner Sen. *Pimentel* wrote a letter to the Chairman of the HRET and another to the Chairman of the CA[89] requesting the restructuring of the HRET and the CA, respectively, to include party-list reps to conform to Secs 17 and 18, Art VI of the Constitution. No positive action was done on the letters, hence this petition. Pimentel was joined by 5 party-list reps as co-petitioners.

Considering the current House composition, petitioners insist that the party-list reps should have at least 1 seat in the HRET and 2 seats in the CA,[90] and that LP was overrepresented by 1 seat in both the HRET and the CA. Petitioners thus raise the issue on whether or not the composition of the HRET and the CA violate the constitutional requirement of proportional representation.

Issues.

(1) May the Court rule on the issue of whether or not the composition of the HRET and the CA violate the constitutional requirement of proportional representation?

(2) Did the HRET and the CA commit grave abuse of discretion in not acting positively to the Pimentel's letters?

Held.

(1) No. The House is granted by the Constitution under Secs 17 and 18, Art VI the discretion to choose its members to the HRET and the CA. Thus, the primary recourse of the party-list reps clearly rests with the House of Reps and not with this Court. *Only if the House fails to comply with the directive of the Constitution on proportional representation of political parties can the party-list reps seek recourse to this Court under its power of judicial review*. But in this case, the party-list reps were not prevented from participating in the election of HRET and CA contingents; they simply refrained from doing so. [Thus, there can be no violation of the Constitutional directive]. Under the *doctrine of primary jurisdiction*, prior recourse to the House is necessary before petitioners may bring the instant case to the court. Consequently, petitioners' direct recourse to this Court is premature. [Moreover, for the Court to interfere with the exercise by the House of its discretion in this instance, absent a clear violation of the Constitution or grave abuse thereof amounting to lack or excess of jurisdiction would violate the *doctrine of separation of powers*.]

[89] Justice Melo and Sen. Ople, respectively

[90] It appears the House had 220 members, 14 of whom were party-list reps, constituting 6.3636% of the House. Of the remaining 206 reps, 151 belonged to LAMP (68.6354%), 36 belonged to LAKAS (16.3636%), 13 to LP (5.9090%), 1 member (0.4545%) each to KBL, PDRLM, Aksyon Demokratiko, Reporma and PROMDI, and 1 rep was an independent.

(2) No. Under Secs 17 and 18 of Art VI of the Constitution and the internal rules of the House, the HRET and the CA are bereft of any power to reconstitute themselves.

COMMISSION ON APPOINTMENTS
Art VI, Sec 18.

Proportional representation of political parties in the CA is understood to mean proportional representation of PERMANENT political parties.

Daza v. Singson
GR 86344, 180 SCRA 496 [Dec 21, 1989]

Facts. Rep. *Daza* represents the Liberal Party (LP) in the Commission on Appointments (CA). When Laban ng Demokratikong Pilipino (LDP) was reorganized, the political realignment resulted in the swelling of the number of LDP members to 159 and diminishing of that of LP to 17. The House consequently revised its representation in the CA giving Daza's seat to *Singson* as additional member from the LDP. Daza now comes to this Court to challenge his removal, arguing that the LDP is not the permanent political party contemplated in the Constitution because it has not been registered. However, when LDP was subsequently registered, he then contended that it must still pass the test of time to prove its permanence.

Issue. Is the replacement of Daza in the CA in accordance with the proportional representation of parties contemplated in *Art VI, Sec 18* of the Constitution?

Held. Yes. Under Daza's theory, a registered party obtaining the majority of the seats in the House would still not be entitled to representation in the CA as long as it was organized only recently and has not yet "aged." LP itself would fall in such a category. Yet no question was raised as to its right to be represented in the CA xxx by virtue of its status as the majority party xxx. At that time it was only 4 months old. It is true that there have been, and there still are, some internal disagreements among the members of LDP, but these are to be expected in any political organization and it surely cannot be considered temporary because of such discord. We resolve in favor of the authority of the House of Reps to change its representation in the CA to reflect at any time the changes that may transpire in the political alignments of its membership. It is understood that such changes must be permanent and do not include the temporary alliances.

Representation in the CA – based on proportional representation. Its members nominated and elected by each House (not by their respective political parties).

Coseteng v. Mitra, Jr.
GR 86649, 187 SCRA 377 [Jul 12, 1990]

Facts. When Laban ng Demokratikong Pilipino (LDP) was organized it formed the new majority in the House of Reps. The 80% of the membership of the House then belonged to LDP. The next largest party in the Coalesced Majority was the Liberal Party (LP). Kilusan ng Bagong Lipunan (KBL) was the principal opposition party. Thus, the House representation in the Commission on Appointments (CA) had to be reorganized. CA then composed of 11 members from the LDP, 1 from LP and another from KBL. Petitioner Rep. *Coseteng*, lone member of the Kababaihan Para sa Inang Bayan (KAIBA) party in the House, contested the validity of their election to the CA on the theory that their election was violative of the constitutional mandate of proportional representation. She also argues that the members representing the political parties must be nominated and elected by their respective political parties. She alleges further that she is qualified to sit in the CA having the support of 9 other house reps of the minority.

Issue. Is the election to the CA violative of *Art VI, Sec 18*?

Held. No. The validity of the election of the newly elected members of the CA—11 from LDP and 1 from the minority—is unassailable. There is no doubt that the apportionment of the House membership in the CA was done on the basis of proportional representation of the political parties. LDP represented 80% of the House, and was thus entitled to 80% of the 12 members of the CA (or 10 of 12 members). The remaining 2 seats were given to the next largest party in the Coalesced Majority and the KBL as the principal opposition party. There is also no merit in Coseteng's contention that the House members in the CA should have been nominated and elected by their respective political parties. It is provided in Art VI, sec 18 that they be elected by the House (not by their party). And even assuming

arguendo that KAIBA be considered as an opposition party, being its lone member, she represents less than 1% of the House membership. She cannot be entitled to a seat in the CA; having the support of 9 other house reps is inconsequential.

Rounding up/down a half-seat in CA is a violation of the rule on proportional representation.

Guingona, Jr. v. Gonzales
GR 106971, 214 SCRA 189 [Oct 20, 1992]

Facts. In the 1992 elections, the Senate was composed of 15 members from LDP, 5 from NPC,[91] 3 from the LAKAS-NUCD[92] and 1 from the LP-PDP-LABAN. In accordance with the rule of proportional representation in electing members to the Commission on Appointments (CA), LDP was entitled to 7.5 seats, NPC to 2.5 seats, LAKAS-NUCD to 1.5 seats and LP-PDP-LABAN 0.5 seat. In the approved composition of the CA, 8 were from LDP and 1 from LP-PDP-LABAN. Sen. *Guingona* now files this petition to prohibit Sen. Pres. *Gonzales*, as ex officio Chairman of the CA, from recognizing the membership of the 8th representative from LDP and the lone member of the LP-PDP-LABAN on the ground that it was violative of the rule of proportional representation.

Issue. Was the constitutional rule on proportional representation in the CA violated when LDP rounded up its membership by ½ a seat?

Held. Yes. In converting the fractional ½ membership into a whole, one other party's fractional membership is made greater while the other suffers diminution of its rightful membership. The provision of *Sec 18* [*of Art VI*] on *proportional representation is mandatory* in character and does not leave any discretion to the Senate to disobey or disregard the rule on proportional representation. No party can claim more than what it is entitled. Furthermore, the *Constitution does not contemplate that the CA must necessarily include 12 senators and 12 members of the House of Reps to function.* Although CA rules by a majority vote of all its members (Art VI, sec 18), evidently in Art VI, sec 19 all that is required for the CA to function is that there be a quorum. Election of the respondent Senators as members of the CA, null and void.

[91] Nationalist People's Coalition
[92] Lakas—National Union of Christian Democrats

LEGISLATIVE INQUIRIES IN AID OF LEGISLATION
Art VI, Sec 21.

Rights of persons appearing in legislative inquiries must be respected.

Bengzon, Jr. v. Senate Blue Ribbon Committee
GR 89914, 203 SCRA 767 [Nov 20, 1991]

Facts. Sps. Romualdez, by allegedly acting in unlawful concert with Ferdinand and Imelda Marcos and taking undue advantage of their influence and connection with them, were being accused before the Sandiganbayan of engaging in devices, schemes and stratagems to unjustly enrich themselves at the expense of the Filipino people. Meanwhile, the respondent *Senate Blue Ribbon Committee*[93] started its investigation on the matter and subpoenaed the petitioners to testify on the alleged sale of 36 (or 39) corporations belonging to Romualdez to Lopa (brother-in-law of the President), which is one of the principal causes of action in their case before the Sandiganbayan. In refusing to testify before the Committee, the petitioners contend the former's inquiry had no valid legislative purpose, i.e. it is not done in aid of legislation, and the inquiry violates their right to due process averring that the publicity generated could adversely affect their rights in the pending case before the Sandiganbayan.

Issue. Did the Senate Blue Ribbon Committee exceed its authority in requiring the petitioners to testify before it?

Held. Yes. For *Art VI, Sec 21* of the Constitution provides that the rights of persons appearing in such inquiries shall be respected, the petitioner's right to due process and right against self-incrimination must be respected. It appears that the contemplated inquiry by the Committee is not really "in

[93] Senate Committee on Accountability of Public Officers

aid of legislation"[94] xxx since the aim of the investigation is to find out whether or not the relatives of the President (Lopa) had violated the Anti-Graft and Corrupt Practices Act, a matter within the province of the courts rather than the legislature. Petition to prohibit the Committee from compelling the petitioners to testify before it, granted.

The power of inquiry with process to enforce it is an essential and appropriate auxiliary to the legislative function.

Questions in aid of legislation, the sum total of information gathered therefrom, must be pertinent to the subject matter in inquiry. It is not necessary that every question be pertinent to any proposed legislation.

The contempt power of the legislative body extends to the end of the last session terminating the existence of that body (i.e. at the adjournment of the last session)

Arnault v. Nazareno

No. L-3820, 87 Phil 29 [July 18, 1950]

Facts. The Govt, through the Rural Progress Administration bought the Buenavista and Tambobong Estates. The entire amount allocated to buy said estates was given to a certain Burt, through his representative petitioner *Arnault*. Because of the anomalies regarding the sale of said estates, the Senate created a special committee to investigate the Buenavista and Tambobong Estates deal. Arnault was called as a witness. *The committee sought to determine who were responsible for and who benefited from the transaction at the expense of the Govt.* Arnault testified that he delivered 2 checks amounting to P1.5 million to Burt and deposited it in an account. Further, he testified that he drew on said account 2 checks: one P500,000 which he transferred to another account, and another P440,000 payable to cash, which he himself cashed. When asked by the Senate committee to reveal the name to whom he gave the P440,000, he refused and asserted that all the transactions were legal but refuses to answer because it may be later used against him. In other words, he invoked his right against self-incrimination. Senate committee cited Arnault in contempt and ordered him imprisoned at New Bilibid Prison until such time he reveals the name sought. Arnault now petitions for *habeas corpus*. He avers the Senate has no power to punish him for contempt because such information is immaterial to, and will not serve, any intended or purported legislation.

Issues.

(1) Does the Senate have the power to cite Arnault in contempt and order his imprisonment?
(2) Does the Senate have the authority to commit Arnault for contempt for a term beyond its period of legislative session, which ended on May 18, 1950?
(3) May Arnault be relieved from answering the query by merely declaring that to do so is self-incriminating?

Held.

(1) Yes. Once an inquiry is admitted or established to be within the jurisdiction of a legislative body to make, the investigating committee has the power to require a witness to answer *any* question *pertinent* to that inquiry, *subject to* his constitutional *right against self-incrimination*. *The inquiry*, to be within the jurisdiction of the legislative body to make, *must be material or necessary to the exercise of a power in it vested by the Constitution*, such as to legislate,[95] and *every question* xxx *must be material or pertinent to the subject of the inquiry* or investigation.[96] So a witness may not be coerced to answer

[94] *Sec 1 of Senate Rules of Procedure Governing Inquiries in Aid of Legislation.* – Inquiries in aid of legislation may refer to implementation or re-examination of any law or in connection with any proposed legislation or formulation of future legislation.

[95] or to expel a Member

[96] Notably, the 1935 Constitution under which this case was decided does not contain a provision on legislative inquiry similar to Art VI, Sec 21 of the present Constitution. Nevertheless, the Court ruled that Congress has the implied power to conduct such investigations for *the power of inquiry with process to enforce it is an essential and appropriate auxiliary to the legislative function*. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to effect or change; and where the legislative body does not itself possess the requisite information, which is not infrequently true, recourse *must* be had to others who do possess it. Experience has shown that mere requests for such information are often

a question that obviously has no relation to the subject of the inquiry. But it does *not* follow that *every* question xxx must be material *to any proposed or possible legislation*. The necessity or lack of necessity for legislative action and the xxx character of the action itself are *determined by the sum total of the information* to be gathered as a result of the investigation, and not by a fraction of such information elicited from a single question. The question which Arnault refused to answer is pertinent to the matter under inquiry. The Special Committee, under the Senate Resolution creating it, is required to determine the parties responsible for the Buenavista and Tambobong estates deal, and it is obvious that the name of the person to whom Arnault gave the P440,000 involved in said deal is pertinent to that determination. It is in fact the very thing sought to be determined. *It is not necessary*, as Arnault contends, *for the legislative body to show that every question propounded to a witness is material to any proposed or possible legislation; what is required is that is that it be pertinent to the matter under inquiry*.

(2) Yes. *There is no sound reason to limit the power of the legislative body to punish for contempt to the end of every session and not to the end of the last session terminating the existence of that body* (until the adjournment of the last session of the Second Congress in 1953).[97] The very reason for the exercise of the power to punish for contempt is to enable the legislative body to perform its constitutional function without impediment or obstruction. To rule otherwise would be to defeat that purpose. In this case, as it was the Senate that committed Arnault, the Senate being a continuing body, there is no limit as to time the Senate's power to punish for contempt. Arguably, the Senate may abuse such continuing power and keep the witness in prison for life. In such cases, the portals of this Court are always open to those whose rights might thus be transgressed.

(3) No. Since according to Arnault himself the transaction was legal, and that he gave the P440,000 to a representative of Burt in compliance with the latter's verbal instruction, there is no basis upon which to sustain his claim that to reveal the name of that person might incriminate him.

Executive privilege[98] may only be invoked by the President. The President may not authorize her subordinates to exercise such power.

While it is discretionary for executive officials to show up during question hour, it is mandatory for them to show up during inquiries in aid of legislation.

Senate v. Ermita
GR 169777 [Apr 20, 2006]

Facts. The Committee of Senate as a whole issued invitations to various officials of the Executive Dept. to be the resource speakers in a public hearing on the North Rail Project. The Senate Committee on National Defense and Security likewise invited AFP officials to appear on its own hearing on various issues.[99] Exec. Sec. *Ermita* requested for the postponement of the hearing in order to afford the officials ample time to prepare for the issues; however, Sen. Pres. Drilon replied by saying that the Senate cannot accede to the request as the letter was sent belatedly. Meanwhile, Pres. Arroyo issued EO 464[100] which prohibits officials of the

unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. (*Arnault v. Nazareno*, No. 87 Phil 29)

[97] The Second Congress was constituted in 1949, and was to expire in 1953. The resolution of the Senate committing Arnault was adopted during the first session of the Second Congress in 1950.

[98] Also known as "presumptive privilege of presidential communications"

[99] See next case digest, Gudani v. Senga

[100] The salient provisions of *E.O. 464* (Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation Under the Constitution, and For Other Purposes):

SECTION 1. *Appearance by Heads of Departments Before Congress*
In accordance with Article VI, Section 22 of the Constitution and to implement xxx the separation of powers xxx, all heads of departments of the Executive Branch

of the government shall secure the consent of the President prior to appearing before either House of Congress.

When the security of the State or the public interest so requires and the President so states in writing, the appearance shall only be conducted in executive session.

SECTION. 2. *Nature, Scope and Coverage of Executive Privilege*. –

(a) *Nature and Scope*. - The rule of confidentiality based on executive privilege is fundamental to the operation of government and rooted in the separation of powers xxx. Further, RA No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides that Public Officials and Employees shall not use or divulge confidential or classified information officially known to them by reason of their office and not made available to the public to prejudice the public interest.

Executive privilege covers all confidential or classified information between the President and the public officers covered by this executive order, including:

xxx xxx xxx

(b) *Who are covered*. – The following are covered by this executive order:

i. Senior officials of executive departments *who in the judgment of the department heads are covered* by the executive privilege;
ii. Generals and flag officers of the Armed Forces of the Philippines and such other officers *who in the judgment of the Chief of Staff are covered* by the executive privilege;
iii. Philippine National Police (PNP) officers with rank of chief superintendent or higher and such other officers w*ho in the judgment of the Chief of the PNP are covered* by the executive privilege;
iv. Senior national security officials *who in the judgment of the National Security Adviser are covered* by the executive privilege; and
v. *Such other officers as may be determined by the President*.

SECTION 3. *Appearance of Other Public Officials Before Congress*. – *All public officials enumerated in Section 2 (b) hereof shall secure prior consent of the President prior to appearing before either House of Congress* to ensure the observance of the principle of separation of powers, adherence to the rule on executive privilege and respect for the rights of public officials appearing in inquiries in aid of legislation.

Executive Dept. from appearing in legislative inquiries in aid of legislation without the consent of the President. Whereupon, Ermita informed the Senate that the officials invited to the hearing cannot attend without the consent of the President pursuant to EO 464. Nonetheless, despite the communications sent by Ermita, 2 officials of the AFP attended the Committee on National Defense and Security hearing. As a result, the 2 were relieved from service and were made to face court martial. The Senate filed a petition before the SC praying that EO 464 be declared unconstitutional for being violative of Secs 21 and 22 of Art VI, among others.

Issue. Is EO 464 unconstitutional for contravening the power of inquiry vested by the Constitution in Congress?

Held. Yes, partially. The legislative's power of inquiry during question hour (under Art VI, Sec 22) is different from its power of inquiry in aid of legislation (under Art VI, Sec 21). The deliberations of the 1986 Constitutional Commission reveal that *while attendance was meant to be discretionary in the question hour, it was compulsory in inquiries in aid of legislation*.[101] Hence, in view of Section 1's specific reference to Art VI, Sec 22 of the Constitution and the absence of any reference to inquiries in aid of legislation (pertaining to that in Art VI, Sec 21), *Section 1 of EO 464 is valid but it can be invoked only during question hour*. Verily, Section 1 of EO 464 cannot be applied to appearances of dept heads in inquiries in aid of legislation.

Section 3 and section 2(b), which is related to the former, are invalid. Section 3 in relation to section 2(b) evinces that the determination by a head of office [that such official invited for appearance in the legislative

[101] *Question hour is only meant to facilitate the oversight function of Congress.* In other words, in question hour, Congress merely seeks to be informed on how department heads are implementing the statutes which it has issued. Thus, in keeping with the separation of powers, considering the right of Congress to such information is not as imperative as that of the President to whom, as Chief Executive, such department heads must give a report of their performance as a matter of duty, *Congress may only request their appearance in question hour*. *But when the inquiry in which Congress requires their appearance is "in aid of legislation" under Section 21, the appearance is mandatory* for the reasons stated in *Arnault*. (*Senate v. Ermita*, GR 169777) See fn 96, p. 71

inquiry is covered by executive privilege][102] underlies the consent to be given by the President prior to appearance before such inquiries. Thus, this determination by such heads of office then becomes the basis for the official's not showing up in the legislative investigation. However, *executive privilege* is an extraordinary power as it constitutes an exemption to the high prerogative of Congress to conduct legislative inquiries. As such, it *may only be invoked or wielded by the highest official of the executive hierarchy—the President*. The President may not authorize her subordinates to exercise such power. In view thereof, Sec 2(b) and 3 must therefore be declared invalid.

The President as Commander-in-Chief may prevent a member of the AFP from appearing in legislative inquiries (even those in aid of legislation); however, Congress may seek recourse with the SC.

Gudani v. Senga
GR 170165, 498 SCRA 670 [Aug 15, 2006]

Facts. Allegations of massive cheating over the 2004 presidential elections and the "Hello Garci" scandal[103] had just emerged, and the Senate resolved to investigate the matter. Petitioners B/Gen. *Gudani* and Lt. Col. Balutan were invited by the Senate to appear in its inquiry. Gudani and Balutan were designated respectively as commander and member of the "Joint Task Force Ranao" which was tasked with the maintenance of peace and order during the elections in Lanao del Norte and del Sur. The night before the hearing, AFP Chief of Staff *Senga* ordered (per instruction of Pres. Arroyo) that no AFP personnel shall appear before any Congressional or Senate hearing without her approval. Gudani and Balutan testified before the Senate nonetheless. They were charged before General Court Martial for willfully disobeying a superior officer, and now they file this petition.

Issue. May the President prevent a member of the AFP from appearing in a legislative inquiry?

Held. Yes, but Congress may seek recourse with the SC. The President could, as a general rule, require military officers to seek presidential approval before appearing before Congress. This is based foremost on the notion that a contrary rule unduly diminishes the prerogative of the President as commander-in-chief. However, the Constitution also recognizes as one of the legislature's functions is the conduct of inquiries in aid of legislation. *We hold that our constitutional and legal order sanctions a modality by which members of the military may be compelled to attend legislative inquiries even if the President desires otherwise, a modality which does not offend the Chief Executive's prerogatives as commander-in-chief: the remedy lies with the courts*.[104] If the President refuses to allow a member of the AFP to appear before Congress, the legislative body seeking such testimony may seek judicial relief to compel the attendance. Such judicial action should be directed at the heads of the executive branch or the armed forces, the persons who wield authority and control over the actions of the officers concerned. The legislative purpose of such

[102] "*Executive privilege*"— based on the doctrine of separation of powers; exempts the executive from disclosure requirements applicable to the ordinary citizen where such exemption is necessary to the discharge of highly important executive responsibilities involved in maintaining governmental operations, and extends not only to military and diplomatic secrets but also to documents integral to an appropriate exercise of the executive domestic decisional and policy making functions, that is, those documents reflecting the frank expression necessary in intra-governmental advisory and deliberative communications (*Senate v. Ermita*, GR 169777 *citing* Black's Law Dictionary). The expectation of a President to the confidentiality of his conversations and correspondences has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. Thus, the privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution. It is for these considerations that the "executive privilege" is justified [as an exemption to inquiries even in aid of legislation]. (*Ibid*.)

[103] the notorious audio excerpt purportedly of a phone conversation between Pres. GMA and a COMELEC official widely reputed as then COMELEC Commissioner Virgilio Garcillano about rigging the 2004 national election results

[104] Under the constitutional principle of judicial review, the Courts are empowered to arbitrate disputes between the legislative and executive branches of govt on the proper constitutional parameters of power (*Gudani v. Senga*, 498 SCRA 706)

testimony, as well as any defenses against the same would be accorded due judicial evaluation. And once the courts speak with finality, both branches of government have no option but to comply for the Judicial branch of the government is empowered by the Constitution to compel obeisance to its rulings by the other branches.

A mere provision of law cannot pose a limitation to the broad power of Congress to conduct inquiries in aid of legislation, in the absence of any constitutional basis.

The filing or pendency of any prosecution of criminal or administrative action should NOT stop or abate any inquiry in aid on legislation.

The right to privacy may NOT preclude one from testifying in a legislative inquiry over matters involving a compelling State interest. The right against self-incrimination may be invoked in a legislative inquiry only when the incriminating questions are being asked.

In re Petition for Issuance of Writ of Habeas Corpus of Camilo L. Sabio
GR 174340 [Oct 17, 2006]

Facts. The *Senate Committee on Government Corporations and Public Enterprises* (the Committee)—represented herein by respondents Senators in their official capacity—sought to conduct an inquiry in aid of legislation on the anomalous losses incurred by the POTC, PHILCOMSAT, and PHC[105] due to the alleged improprieties in their operations by their respective Board of Directors. It is alleged that the PCGG may have conspired in the anomalies. The Committee subpoenaed petitioners PCGG Chairman *Sabio*, PCGG Commissioners, and the directors and officers of PHC to testify as resource persons. Petitioners refused.

Sabio and the PCGG Commissioners invoke Sec 4(b) of EO 1 which provides that "[n]o member or staff of the [PCGG] shall be required to testify or produce evidence in any judicial, *legislative* or administrative proceeding concerning matters within its official cognizance." EO 1 was issued by Pres. Aquino pursuant to her legislative power under the Freedom Constitution.

The PHC officers and directors invoke the *sub judice* principle alleging that several courts and tribunals have already acquired jurisdiction over the controversies subject of the inquiry. They also invoke their constitutional rights to privacy and against self-incrimination.

Arrest warrants were issued against Sabio and the PCGG Commissioners for contempt of the Senate. Sabio contends that the Committee has no power to punish him and his Commissioners for contempt.

Issues.

(1) May Sec 4(b) of EO 1 preclude Sabio and the PCGG Commissioners from testifying in the inquiry in aid of legislation?
(2) May the *sub judice* principle preclude the PHC officers and directors from testifying in the inquiry?
(3) May the constitutional rights to privacy and against self-incrimination preclude the PHC officers and directors from testifying in the inquiry?
(4) Does the Senate Committee have the power to punish for contempt of the Senate?

Held.

(1) No. Sec 4(b) of EO 1 has been repealed by the 1987 Constitution. Sec 4(b) of EO 1 is directly repugnant with Art VI, Sec 21 of the Constitution. The Congress' power of inquiry, being broad, encompasses everything that concerns the administration of existing laws as well as proposed or possibly needed statutes. *A mere provision of law cannot pose a limitation to the broad power of Congress, in the absence of any constitutional basis*; and there is no Constitutional provision granting exemption to the PCGG members and staff.[106]

[105] Philippines Overseas Telecommunications Corporation (POTC), Philippine Communications Satellite Corporation (PHILCOMSAT), and PHILCOMSAT Holdings Corporation (PHC)

[106] The Court declared Sec 4(b) of EO 1 now unconstitutional also because it is inconsistent with Art XI, Sec 1 (principle of public accountability), Art II, Sec 28 (policy of full disclosure) and Art III, Sec 7 (right to public information) of the Constitution. (*In re Petition for Issuance of Writ of Habeas Corpus of Camilo L. Sabio*, GR 174340 [2006])

(2) No. Suffice it to state that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation provide that *the filing or pendency of any prosecution of criminal or administrative action should not stop or abate any inquiry to carry out a legislative purpose*.

(3) No. For there to be a violation of the right to privacy, the person invoking the same must have exhibited a reasonable expectation of privacy; and the PHC directors and officers did not so exhibit because *there can be no reasonable expectation of privacy over matters where there is a compelling State interest*. Such matters are of public concern and over which the people have the right to information. The alleged anomalies and the conspiratorial participation of the PCGG and its officials are compelling reasons for the Senate to exact vital information from petitioners in crafting the necessary legislation to prevent corruption and formulate remedial measures and policy determination regarding PCGG's efficacy.

Re the *right against self-incrimination*, it *may be invoked only when the incriminating question is being asked*, since there is no way of knowing in advance the nature or effect of the questions to be asked. That this right may possibly be violated or abused is no ground for denying the Senate their power of inquiry.

(4) Yes. Art VI, Sec 21 grants the power of inquiry not only to the Senate and the House of Reps, but also to any of their respective committees. This conferral of the legislative power of inquiry upon any committee of Congress must carry with it all powers necessary and proper for its effective discharge. Otherwise, Art VI, Sec 21 will be meaningless.

QUESTION HOUR
Art VI, Sec 22.

Senate v. Ermita
GR 169777 [Apr 20, 2006]

See under this section, p. 72

To invoke executive privilege, there must be a formal claim by the President containing the precise reasons for preserving confidentiality

Invitations to legislative inquiries (both for question hour and in aid of legislation) should contain the "possible needed statute which prompted the need for the inquiry," along with "the usual indication of the subject of inquiry and the questions relative to and in furtherance thereof"

Neri v. Senate Committee on Accountability
GR 180643 [Mar 25, 2008]

Facts. Respondent Senate Committees were conducting an investigation on the controversial NBN-ZTE deal.[107] Petitioner former NEDA Director-General *Neri* was invited to testify on the matter to which he obliged. He was grilled for 11 hours. He disclosed relevant information,[108] answering all questions propounded to him, but when pressed on 3 questions,[109] he refused to answer invoking executive privilege. He was sent another invitation to appear and testify before the Senate. Exec. Sec. Ermita replied by requesting the respondent Committees to dispense with Neri's testimony on the ground of executive privilege. When Neri did not appear, the Senate cited him in contempt and was ordered arrested. Petitioner then filed a petition assailing said order of respondents contending that his claim of executive privilege is upon the order of the President and within the parameters laid down in *Senate v. Ermita*. Respondent, on the other hand, argued by saying among other things that petitioner's testimony is material and pertinent in the investigation conducted in aid of legislation.

Issues.

(1) Did Neri correctly invoke executive privilege?

[107] the anomalous circumstances attending the contract entered into by DOTC with Zhong Xing Telecommunications Equipment for the supply of equipment and services for the National Broadband Network Project

[108] Such as the purported bribery of COMELEC Chair Benjamin Abalos amounting to P200 Million in exchange for Neri's approval of the NBN Project, and Neri's narration that he informed the President of the bribery attempt and that she instructed him not to accept the bribe.

[109] Neri refused to answer the following questions:

(a) whether or not Pres. Arroyo followed up the NBN Project;
(b) whether or not she directed him to prioritize it; and
(c) whether or not she directed him to approve.

(2) Are the 3 questions Neri refused to answer covered by executive privilege?
(3) Are the 3 questions material and pertinent in the investigation conducted in aid of legislation?
(4) Did respondent Committees commit grave abuse of discretion in issuing the contempt order?

Held.

(1) Yes. Jurisprudence teaches that for the executive privilege to be properly invoked, there *must be a formal claim of privilege* lodged *by* the head of the department which has control over the matter (i.e. *the President*). A formal and proper claim of executive privilege *requires a "precise and certain reason" for preserving their confidentiality*.

The Letter of Exec. Sec. Ermita satisfies the requirement. It serves as the formal claim of privilege. There, he expressly states that "*this Office* is constrained to invoke the settled doctrine of executive privilege as refined in *Senate v. Ermita*, and has advised Secretary Neri accordingly." Obviously, he is referring to the Office of the President.

(2) Yes. Exec. Sec. Ermita premised his claim of executive privilege on the ground that the communications elicited by the three (3) questions "fall under conversation and correspondence between the President and public officials" necessary in "her executive and policy decision-making process" and, that "the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China." Simply put, the bases are presidential communications privilege and executive privilege on matters relating to diplomacy or foreign relations.

Indeed, the communications elicited by the three (3) questions are covered by the presidential communications privilege. *First*, the communications relate to a "quintessential and non-delegable power" of the President, i.e. the power to enter into an executive agreement with other countries. *Second*, the communications are "received" by a close advisor of the President. Under the "operational proximity" test, Neri can be considered a close advisor, being a member of Pres. GMA's cabinet. *And third*, there is no adequate showing of a compelling need that would justify the limitation of the privilege and of the unavailability of the information elsewhere by an appropriate investigating authority.

(3) No. The record is bereft of any categorical explanation from respondent Committees to show a compelling or critical need for the answers to the three (3) questions in the enactment of a law. Instead, the questions veer more towards the exercise of the legislative oversight function under Sec 22 of Art VI rather than Sec 21 of the same Article. In drawing the line between an inquiry *in aid of legislation* and an inquiry in the exercise of oversight function, much will depend on the content of the questions and the manner the inquiry is conducted.

(4) Yes. Respondent Committees committed grave abuse of discretion in issuing the contempt Order in view of five (5) reasons. xxx *Second*, respondent Committees did not comply with the *requirement* laid down in *Senate v. Ermita* that the *invitations should contain the "possible needed statute which prompted the need for the inquiry," along with "the usual indication of the subject of inquiry and the questions relative to and in furtherance thereof."* Compliance with this requirement is *imperative, both under Secs 21 and 22* of Art VI of the Constitution. This must be so to ensure that the rights of both persons appearing in or affected by such inquiry are respected as mandated by the Constitution. Unfortunately, despite Neri's repeated demands, respondent Committees did not send him an advance list of questions. xxx *Fourth,* we find merit in the argument of the OSG that respondent Committees likewise violated Sec 21 of Art VI of the Constitution, requiring that the inquiry be in accordance with the "duly published rules of procedure."

ORIGIN OF BILLS
Art VI, Sec 24.

*"*xxx *What the Constitution simply means is that the initiative for filing revenue or* xxx *bills of local application must come from the House of Reps* xxx*"*

Tolentino v. Secretary of Finance
GR 115544, 235 SCRA 630 [Aug 25, 1994]

Facts. The complete title of RA 7716 (E-VAT Law) is "An Act Restructuring the VAT System, Widening its Tax Base and Enhancing its Administration, and for these purposes amending and repealing the Relevant Provisions of the NIRC, as amended, and for other purposes". It evolved from HB 11197 which was duly passed by the House of Reps and transmitted to the Senate. In the Senate, SB 1630 was submitted "in substitution of SB 1129, taking into consideration xxx HB 11197." Because the President had certified SB 1630 as urgent for the reason of a "growing budget deficit," it was approved on the 2nd and 3rd reading on the same day. SB 1630 was then referred, together with HB 11197, to a conference committee which recommended that "HB 11197, in consolidation with SB 1630, be approved xxx as reconciled and approved by the conferees." The enrolled bill was then approved as RA 7716.

Among those amended by RA 7716 is sec 103 of the NIRC. Such amendment effected the removal of the tax exemption granted to Philippine Airlines (PAL) as far as the VAT is concerned. The petitioners now challenge the constitutionality of RA 7716 for the following reasons (among others):

(1) RA 7716 did not "originate exclusively" in the House of Reps as required by *Art VI, Sec 24* of the Constitution, because it is in fact the result of the *consolidation* of 2 distinct bills: HB 11197 and SB 1630. They aver that to be considered as having originated in the House of Reps, RA 7716 must retain the essence of HB 11197. They further argue that SB 1630 was passed not in substitution of HB 11197 but of another senate bill (SB 1129) and what the Senate merely did was to "take HB 11197 into consideration" in enacting SB 1630.

(2) SB 1630 did not pass 3 readings on separate days as required by *Art VI, Sec 26(2)* of the Constitution because the 2nd and 3rd readings were done on the same day. The further argue that the presidential certification of urgency is invalid because a "growing budget deficit" is not an unusual condition in this country.

(3) The amendment of sec 103 of the NIRC is not fairly embraced in the title of RA 7716 in violation of *Art VI, Sec 26(1)* of the Constitution.

Issues.

(1) Does RA 7716 violate *Art VI, Sec 24* of the Constitution?

(2) Does it violate *Art VI, Sec 26(2)* of the Constitution?

(3) Does it violate *Art VI, Sec 26(1)* of the Constitution?

Held. All petitions dismissed.

(1) No. To insist that a revenue statute xxx must substantially be the same as the HB would be to deny the Senate's power not only to "concur with amendments" but also to "propose amendments." What *the Constitution simply means is that the initiative for filing revenue xxx bills xxx come from the House of Reps.* Moreover, the *Constitution does not prohibit the filing in the Senate of a substitute bill in anticipation of its receipt of the bill from the House, so long as action by the Senate xxx is withheld pending receipt of the HB*. The Court cannot, therefore, understand the alarm expressed over the fact that 8 months before the House passed HB 11197, SB 1129 had been filed in the Senate. After all it does not appear that the Senate ever considered it. It was only after the Senate had received HB 11197 that the process of legislation in respect of it began.

(2) No. *The presidential certification* [of the necessity for immediate enactment to meet a public calamity or emergency] *dispensed with the requirement not only of printing* [of the bill in its final form for distribution 3 days before final approval] *but also that of reading the bill on separate days* for neither the printing nor reading on separate days would, if dispensed without the other, ensure speedy enactment of a law in the face of an emergency.

The factual basis of presidential certification of the bill, which involves doing away with procedural requirements designed to insure that bills are duly considered by members of Congress, certainly should elicit a different standard of review (as compared to the factual basis for the existence of a national emergency for the delegation of emergency powers to the president)

(3) No. Since the title states that the purpose of the statue is to expand the VAT system, one way of doing this is to widen its base by withdrawing some of the exemptions granted before. To insist that PD 1590 be mentioned in the title of the law, in addition to Sec 103 of the NIRC, in which it is specifically referred to, would be to insist that the title of a bill should be a complete index of its content. *The trend is xxx to consider it sufficient if the title expresses the general subject of the statute and all its provisions are germane to the general subject thus expressed.*

Alvarez v. Guingona, Jr.
GR 118303, 252 SCRA 695 [Jan 31, 1996]

Facts. RA 7720 is "An Act Converting the Municipality of Santiago, Isabela into an Independent Component City to be known as the City of Santiago." Its legislative history is as follows.

The public hearings on HB 8817 were under way in the House of Reps when SB 1243, a bill of the same import as the former, was filed in the Senate. The Senate conducted public hearings on SB 1243 a little less than a month after the HB was passed by the House of Reps and transmitted to them. The Senate realizing the HB was on all fours with SB 1243, approved it. The enrolled bill was subsequently passed into law as RA 7720.

Issue. Did RA 7720 originate exclusively in the House of Reps in accordance with Sec 24, Art VI of the Constitution?

Held. Yes. Although a bill of local application like HB 8817 should xxx originate exclusively in the House of Reps, the claim of petitioners that RA 7720 did not originate exclusively in the House of Reps because a bill of the same import SB 1243, was passed in the Senate is *untenable* because it cannot be denied that HB 8817 was filed before SB 1243. Thus, HB 8817 was the bill that initiated the legislative process xxx. Furthermore, the Senate held in abeyance any action on SB 1243 until it received HB 8817. The filing in the Senate of a substitute bill in anticipation of its receipt of the bill from the House, does not contravene the constitutional requirement that such bill should originate from the Lower House, for as long as the Senate does not act thereupon until it receives the HB. "*xxx What the Constitution simply means is that the initiative for filing xxx bills of local application must come from the House of Reps* xxx"

POWER OF APPROPRIATION, Constitutional Limitations
Art VI, Sec 25.

A non-appropriation item may not be inserted in an appropriation measure – Art VI, sec 25(2)

Garcia v. Mata
No. L-33713, 65 SCRA 517 [Jul 30, 1975]

Facts. *Garcia* was a reserve officer who was reverted into inactive status. Since his reversion, he has not received any emoluments from the AFP nor was he ever employed in the govt in any capacity. Relying on par 11 of RA 1600 (General Appropriations Act of FY 1956-57), he now petitions, among others, to compel the Sec. of National Defense *Mata* et al., to reinstate him in the AFP and be paid the allowances due to him from the time of his reversion. The court held that par 11 relied on is unconstitutional and therefore inoperative. Hence this petition for certiorari. Said paragraph begins with "… when there is no emergency, no reserve officer of the AFP may be called to a tour of active duty for more than 2 years…" and goes on to state that "xxx reserve officers with at least 10 years of active accumulated commissioned service xxx shall not be reverted to inactive status xxx"

Issue. Is Paragraph 11 a "rider" in the GAA of FY 1956-1957 (RA 1600)?

Held. Yes. Par 11 is thus invalid. Par 11 relied on refers to the fundamental governmental policy of the calling to active duty and the reversion to inactive status of reserve officers in the AFP. It was a non-appropriation item inserted in an appropriation measure in violation of the Constitutional inhibition against "riders" to the GAA [now in *Art VI, sec 25(2)*]. Petition denied.[110]

The President may NOT indiscriminately transfer funds from one department of the Executive Dept to any program of any department without regard as to whether or not the funds to be transferred are actually savings in the item, or whether or not the transfer is for the purpose of augmenting the item to which said transfer is to be made. – Art VI, Sec 25(5)

Demetria v. Alba
No. L-71977, 148 SCRA 208 [Feb 27, 1987]

Facts. Petitioners assail the constitutionality of PD 1177 (Budget Reform Decree of 1977). Par 1 of Sec 44 thereof provides "the President shall have

[110] The same par 11 was also held in violation of *Art VI, Sec 26(1)* which requires all bills to embrace no more than 1 subject which shall be expressed in the title. (*Garcia v. Mata*, 65 SCRA 517)

the authority to transfer any fund appropriated for the different xxx agencies of the Executive Dept, which are included in the GAA, to any program xxx included in the GAA or approved after its enactment." They argue that this overrides the safeguards prescribed by the Constitution designed to forestall abuse in the expenditure of public funds.

Issue. Does par 1, Sec 44 of PD 1177 override the safeguards prescribed in Art VIII (now Art VI) of the Constitution with respect to use of public funds?

Held. Yes. Par 1 of Sec 44 of PD 1177 is unconstitutional. It unduly overextends the privilege granted under Art VIII, Sec 16(5) [now *Art VI, Sec 25(5)*] of the Constitution. It empowers the President to indiscriminately transfer funds from one dept xxx or agency of the Executive Dept to any program xxx of any dept xxx included in the GAA xxx without regard as to whether or not the funds to be transferred are actually savings in the item from which the same are to be taken, or whether or not the transfer is for the purpose of augmenting the item to which said transfer is to be made. It also violates the requirement of specifications in Sec 16(2) [now *Art VI, Sec 25(2)*].[111]

Philippine Constitutional Association (PHILCONSA) v. Enriquez

GR 113888, 235 SCRA 506 [Aug 19, 1994]

Facts. The General Appropriations Bill (GAB) of 1994 was passed by Congress on Dec 17, 1993 and was later signed into GAA of 1994 by the President with certain conditions manifest in his Presidential Veto Message. No step was taken by the Congress to override such vetoes. But here were 4 cases at bench, the petitioners all seeking judicial intervention to rule on conflicting claims of authority between the Legislative and Executive over control of the national budget of 1994. The constitutionality of following provisions of said GAA were assailed:

a. the Countrywide Devt Fund
b. the special provision on the realignment of allocation of Operational Expenses

Among others, the constitutionality of the following presidential vetoes were assailed:

a. special provision in the appropriation for debt service
b. special provisions for the AFP and DPWH

Issues.

(1) Did the Congress exceed their authority in the enactment of GAA of 1994?
(2) Did the President commit a grave abuse of discretion in the exercise of his veto power?

Held.

(1) No. To the argument that the Congress encroached on Executive power when it proposed and identified projects and activities to be funded by the Countrywide Devt Fund, the Court held that under the Constitution, the "power of the purse" belongs to Congress subject only to the veto power of the President. The President may propose the budget but still the final say on the matter of appropriations is lodged in the Congress, and such power carries with it the power to specify the project or activity to be funded under the appropriation law. However, these proposals and identifications are merely recommendatory for it is the president who shall implement them. Congress did NOT exceed authority here.

No. To the argument that the Congress allowed a Member to transfer appropriations when it provided for realignment of his allocation for operational expenses to any other expense category thereby violating *Sec 25(5), Art VI* of the Constitution, the Court held that the special provision only allow the Members to determine the necessity of realignment of the savings xxx. It is still the Senate Pres. and the Speaker of the House who shall see to it the constitutional provisions on transferring appropriations are observed.

(2) No. To the argument that the President cannot veto the Special Provision on the appropriation for debt service without vetoing the entire amount appropriated for said purpose (which he did), the Court held that such restrictive interpretation [*of Sec 27(2), Art VI of the Constitution*] overlooks the constitutional mandate [*Sec 25(2) of Art VI*], that any provision in the GAB shall relate specifically to some

[111] Was also held violative of Art VI, Sec 29(1) (sets the conditions on the release of money from the Treasury) and Sec 29(2) (the restrictions on the use of public funds for public purposes) in view of the unlimited authority bestowed upon the President (*Demetria v. Alba*, 148 SCRA 208)

particular appropriation therein. *"Inappropriate provisions"*[112] *have no place in an appropriations bill and can thus be vetoed separately from an item.* The vetoed provision in question is clearly an attempt to repeal the Foreign Borrowing Act and EO 292, and should thus be done in a separate law, not in the appropriations law. The veto is valid.

Yes. To the presidential veto of the condition set by the Congress that only 30% of the total appropriation for road maintenance should be contracted out, the Court held that the special provision is not inappropriate. It specifies how the said item shall be expended, and is as such appropriate. The veto is invalid.

Yes. To the presidential veto of the provision on purchase of medicines by the AFP, the Court held that such provision is appropriate. Being directly related to and inseparable from the appropriation item on purchases of medicine by the AFP, the special provision cannot be vetoed by the president without vetoing the said item. The veto is invalid.

No. To the presidential veto of the provision on prior approval of Congress for purchase of military equipment, the Court held that any provision blocking an administrative action in implementing a law or requiring legislative approval of executive acts must be incorporated in a separate bill. Deemed inappropriate, the veto is valid.

No. To the presidential veto of the provision authorizing the Chief of Staff to use appropriated savings to augment AFP pension funds, the Court held that it is violative of *Art VI, Sec 29(1) and Sec 25(5)* of the Constitution. The veto is valid.

TITLE OF BILLS
Art VI, Sec 26(1).

[112] "Inappropriate provisions" – unconstitutional provisions, provisions intended to amend other laws

The one title-one subject rule should be given practical rather than technical construction; it is sufficient that the title expresses the general subject and all the provisions are germane to that general subject.

It is the subject, not the effect of a law, which is required to be briefly expressed in its title.

Philippine Constitutional Association (PHILCONSA) v. Gimenez
No. L-23326, 15 SCRA 479 [Dec 29, 1965]

Facts. This is a petition to restrain the Auditor General from passing in audit the payment to any former member of the Congress of retirement and vacation gratuities pursuant to RA 3836 as its validity is being assailed. RA 3836 entitled "An Act Amending Subsection (c), Section 12 of CA No. 186, as Amended by RA No. 3096" is assailed here for reasons, among others, that the provision for the retirement benefits of the members xxx of Congress is not expressed in the title of the bill in violation of [*Art VI, Sec 26(1)* of] the Constitution. CA 186 establishes the GSIS and provides for both retirement and insurance benefits of its members. RA 3836 provides under sec 1 thereof a special retirement grant to Senators or members of the House of Reps who are *not members* of the GSIS to be, under sec 2, effective "upon its approval."

Issue. Is the subject matter of RA 3836 germane to that expressed in the title?

Held. No. RA 3836 refers to members of Congress who are not members of the GSIS. To provide retirement benefits, therefore, for these officials, would relate to a subject matter which is *not* germane to CA 186 for the same establishes the GSIS and provides xxx benefits to its members.[113]

Tio v. Videogram Regulatory Board
No. L-75697, 151 SCRA 208 [Jun 18, 1987]

[113] Also found violative of Art VI, Sec 10 which provides that no increase in the compensation of members of the Congress shall take effect until after the expiration of the full term of all the members approving such increase. (*PHILCONSA v. Gimenez*, 15 SCRA 479)

Facts. PD 1987 entitled, "An Act Creating the Videogram Regulatory Board" imposed taxes for the first time on the purchase or rental of videograms. In its preamble, it states that videogram "establishments collectively earn around [P600M] per annum from rentals, sales and disposition of videograms, and such earnings have not been subjected to tax x x x", and that "proper taxation of the activities of videogram establishments will not only alleviate the dire financial condition of the movie industry x x x but also provide an additional source of revenue for the Government, and at the same time rationalize the heretofore uncontrolled distribution of videograms."

Petitioner *Tio*, a videogram operator, assails the validity of the decree contending, among others, that Sec 10 thereof, which imposes said taxes, is a rider and is not germane to the subject matter in violation of *Art VI, Sec 26(1)* of the Constitution.

Issue. Is the said provision imposing taxes on the purchase or rental of videograms embraced in the subject matter expressed in the title of the decree?

Held. Yes. The foregoing provision is germane to and is reasonably necessary for the accomplishment of the general object of the decree, which is the regulation of the video industry through the Videogram Reg. Board as expressed in its title. The express object of the decree to include taxation of the video industry in order to regulate and rationalize the uncontrolled distribution of videograms is evident from the Preamble. The title is comprehensive enough to include the purposes expressed in its Preamble and reasonably covers all its provisions.[114]

[114] *Rules in determining whether the constitutional requirement as to title is satisfied*:

(1) if all the parts of the statute are related and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with the general subject and title;

(2) many provisions under a single general subject may be considered in furtherance of such subject by providing for the means of carrying out the general object;

(3) the constitutional requirement should not be so narrowly construed as to cripple or impede the power of legislation; and

(4) it should be given practical rather than technical construction. (*Tio v. Videogram Regulatory Board*, 151 SCRA 208)

Philippine Judges Association v. Prado

GR 105371, 227 SCRA 703 [Nov 11, 1993]

Facts. RA 7354 entitled "An Act Creating the Phil Postal Corp, Defining its Powers, Functions and Responsibilities, Providing for Regulation of the Industry and for Other Purposes Connected Therewith" provides in sec 35 thereof that all franking privileges authorized by law are thereby repealed with some exceptions. It thus withdrew the franking privilege of the SC, CA and trial courts of the Phils among other agencies. Petitioners argue, among others, that said Sec 35 is not expressed in the title of the law, nor does it reflect its purposes contrary to *Art VI, Sec 26(1)* of the Constitution. They further argue that Sec 35 was not included in the original version of the Senate and House bill from which RA 7354 evolved. As that appeared only in the Conference Committee Report after the last reading of the bill, its addition, they allege, violates *Art VI, Sec 26(2)* of the Constitution.

Issues.

(1) Is Sec 35 germane to the subject expressed in the title?

(2) Was RA 7354 duly enacted in accordance to Art VI, Sec 26(2)?

Held.[115]

(1) Yes. *Art VI, Sec 26(1)* was not violated. Where a statute repeals a former law, such repeal is the effect and not the subject of the statute; and *it is the subject, not the effect of a law, which is required to be briefly expressed in its title*. It was never claimed that every other Act which the new Act repeals or alters by implication must be mentioned in the title of the latter.

(2) Yes. Aside from holding that the Conference Committee may deal generally with subject matter and not merely limited to resolving differences between the 2 Houses, the Court declined to look into the charges that RA 7354 was not enacted with the formalities mandated by the Constitution in *Art VI Sec 26(2)* holding that *both the enrolled bill and legislative journals certify that the measure was duly enacted* in accordance to said constitutional mandate. The Court held that it is

[115] Sec 35 was, however, declared nonetheless unconstitutional for violation of the constitutional equal protection clause (Art III, Sec 1). (*Philippine Judges Assoc. v. Prado*, 227 SCRA 703)

bound by such official assurances from a coordinate department of the govt, to which it owes, at the very least, a becoming courtesy.

Tobias v. Abalos
GR L-114783, 239 SCRA 106 [Dec 8, 1994]
See under this section, p. 49, issue (3)

Art VI, Sec 26 (1) was envisioned to:

(a) prevent log-rolling legislation intended to unite the members of the legislature who favor any one of unrelated subjects in support of the whole act;
(b) to avoid surprises or fraud upon the legislature; and
(c) to fairly apprise the people.

Tan v. Del Rosario, Jr.
GR 109289, 237 SCRA 324 [Oct 3, 1994]

Facts. Petitioners assail the constitutionality of RA 7496 amending certain provisions of the NIRC. Among others, petitioners aver that the title of the HB-progenitor of RA 7496 is deficient and thus violative of *Art VI, Sec 26(1)* of the Constitution. The title in full reads: "An Act Adopting the Simplified Net Income Taxation Scheme For the Self-Employed and Professionals Engaged in the Practice of their Profession, Amending Sections 21 and 29 of the NIRC, as amended". In view of the pertinent provisions (sec 21 and 29), the petitioners aver the amendatory law should be considered as having now adopted a gross income, instead of as having still retained the net income, taxation scheme.

Issue. Is the subject matter germane to the title?

Held. Yes. The allowance for deductible items, it is true, may have significantly been reduced by the questioned law in comparison with that which has prevailed prior to the amendment; limiting, however, allowable deductions from gross income is neither discordant with, nor opposed to, the net income tax concept. The fact of the matter is still that various deductions, which are by no means inconsequential, continue to be well provided under the new law. *Art VI, Sec 26(1)* was envisioned so as (a) to prevent log-rolling legislation xxx, (b) to avoid surprises or even fraud upon the legislature xxx, and to (c) fairly apprise the people xxx. Anything else would be to require a virtual compendium of the law which could not have been the intendment of the constitutional mandate.

FORMALITIES in the passage of bills
Art VI, Sec 26(2).

Where both the enrolled bill and legislative journals certify that the measure was duly enacted, the Court will not look into charges that a law was not enacted with the required constitutional formalities

Philippine Judges Association v. Prado
GR 105371, 227 SCRA 703 [Nov 11, 1993]
See under this section, p. 82, issue (2)

The presidential certification dispensed with the requirement not only of printing of the bill before final approval but also that of reading the bill on separate days.

Tolentino v. Secretary of Finance
GR 115544 [Aug 25, 1994]
See under this section, p. 77, issue (2)

Laws enjoy presumption of having validly passed through the regular congressional processes in its enactment.

Tobias v. Abalos
GR L-114783, 239 SCRA 106 [Dec 8, 1994]
See under this section, p. 49, issue (4)

The "no-amendment rule" upon last reading of a bill refers only to the procedure to be followed by each House of Congress with regard to bills initiated in each of said respective Houses, before said bill is transmitted to the other House for its concurrence or amendment.

ABAKADA Guro Partylist v. Ermita

GR 168056 [Sept 1, 2005]

Facts. RA 9337 amended certain VAT provisions of the NIRC. RA 9337 is a consolidation of 3 legislative bills: HB 3555 and 3705, and SB 1950. In the consolidation of the 3 bills, the Bicameral Conference Committee introduced changes in the disagreeing provisions of the 3 bills. Among the changes introduced was the inclusion of stand-by authority in favor of the President as a compromise to the disagreement between the 10% VAT rate in the SB and the 12% VAT rate in the HBs. It authorized the President to raise VAT rate from 10% to 12% when certain conditions[116] are met.

Petitioners aver that the inclusion of the stand-by authority is a violation of the "no-amendment rule" upon last reading of a bill laid down in *Art VI, Sec 26(2)* of the Constitution.

Issue. Is the inclusion of the stand-by authority a violation of the "no-amendment rule"?

Held. No. *The "no-amendment rule" refers only to the procedure to be followed by each house of Congress with regard to bills initiated in each of said respective houses, before said bill is transmitted to the other house for its concurrence or amendment.* Verily, to construe said provision in a way as to proscribe any further changes to a bill after one house has voted on it would lead to absurdity as this would mean that the other house of Congress would be deprived of its constitutional power to amend or introduce changes to said bill. Thus, Art. VI, Sec. 26 (2) cannot be taken to mean that the introduction by the Bicameral Conference Committee of amendments and modifications to disagreeing provisions in bills that have been acted upon by both houses of Congress is prohibited.

[116] The common *proviso* in Secs 4, 5, and 6 of RA 9337 reads:

"That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of [VAT] to twelve percent (12%), after any of the following conditions has been satisfied:

"(i) [VAT] collection as a percentage of [GDP] of the previous year exceeds two and four-fifth (2 ⅘%); or

"(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%)."

APPROVAL OF BILLS
Art VI, Sec 27.

The President's item-veto power in an appropriation bill does not grant the authority to veto a part of an item and to approve the remaining portion.

However, "inappropriate provisions" have no place in an appropriations bill; it can thus be vetoed separately from an item [without doing violence to the limitation on the President's item-veto power]

Gonzales v. Macaraig, Jr.

GR 87636, 191 SCRA 452 [Nov 19, 1990]

Facts. Petitioners assail the validity of the presidential vetoes on Sec 55 of the GAA of 1989 and the substantially similar provision in the GAA of 1990, Sec 16. Said Sec 55 provides that appropriations items recommended by the President in the budget submitted to Congress which has been reduced or disapproved shall not be restored or increased using appropriations authorized for other purposes by augmentation. Notwithstanding being previously vetoed, Sec 55 was subsequently substantially reproduced in Sec 16 for FY '90 but was attached as a condition for some other item.

Issue. Did the President exceed her item-veto power accorded by the Constitution (*Art VI, Sec 27(2)*)?

Held. No. Veto is valid where the provision in the Appropriations bill is deemed *inappropriate* pursuant to *Art VI, Sec 25(2).* Sec 55 (FY '89) and Sec 16 (FY '90) were deemed inappropriate and are thus validly subject to veto for the following reasons: (1) does not "relate to any particular appropriation" but applies more to a general policy in respect to augmentation from savings, and (2) it is repugnant to *Art VI, sec 25(5)*, impairing the authority of the President and other key officials to augment any item from savings xxx. Concededly, the Congress may attach conditions in an appropriation (as in Sec 16 for FY '90) and the presidential veto power may not strike these out while allowing the appropriation itself to stand; however, for the rule to apply, these should be *appropriate*. The conditions must exhibit a connection with money items in a budgetary sense in the schedule of expenditures. The vetoed provisions are actually

general law measures more apt for substantive and, therefore, separate legislation. Presidential vetoes upheld.

Bengzon v. Drilon
GR 103524, 208 SCRA 133 [Apr 15, 1992]

Facts. In 1957, RA 1797 was enacted and provided for the adjustment of pensions of retired Justices. Such privilege was extended to retired members of Constitutional Commissions by RA 3595 and later to retired members of the Armed Forces by PD 578. In 1975, Pres. Marcos issued PD 644 which repealed the foregoing Acts. Shortly after, Pres. Marcos restored automatic readjustment of pensions for retired Armed Forces officers *only*. The apparent unfairness led Congress to pass HB 16297 in 1990 to restore the repealed provisions by PD 644. Pres. Aquino vetoed the HB. Meanwhile in 1991, PD 644, upon petition of retired justices, was declared to be null and void for lack of a valid publication pursuant to *Tañada v. Tuvera*. Pursuant to the ruling, Congress included in the GAB of 1992 appropriations for the payment of adjusted pension rates of the retired justices. Pres. Aquino vetoed all that referred to the payment of said pension for the reason, among others, that it nullified her veto of HB 16297 in 1990. It resulted into the veto of portions of two sections in the appropriations for the judiciary and of an entire section in the item on General Fund Adjustments.

Issues.

(1) Did the President exceed her item-veto power accorded by the Constitution (*Art VI, Sec 27(2)*)?

(2) Do the presidential vetoes contravene the constitutional provision on the Judiciary's fiscal autonomy

Held.

(1) Yes. *The power to disapprove any item or items in an appropriation bill does not grant the authority to veto a part of an item and to approve the remaining portion*. In this case, portions of an item have been chopped up into vetoed and unvetoed parts. Moreover, the vetoed portions are not *items*. They are *provisions*.[117] In addition, it turns out PD 644 never became law, so it follows RA 1797 was not repealed and thus continued to be effective. Hence, it can be seen that when Pres. Aquino made the vetoes in question, she was actually vetoing RA 1797 which of course is beyond her power to accomplish. She also in effect was vetoing this Court's resolution in 1991 which, in fine, declared RA 1797 to be effective. Such a veto is also of course beyond her power to make. The President may not repeal a statute nor may she set aside or reverse a final and executory judgment of this Court through exercise of the veto power.

(2) Yes. *Fiscal autonomy*[118] *enjoyed by the Judiciary contemplates a guarantee of full flexibility to allocate and utilize resources with the wisdom and dispatch that their needs require*. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law xxx and pay plans of the govt and allocate such sums as may be provided by law and prescribed by them in the discharge of their functions. It *means freedom from outside control*. In the case at bar, the veto of the subject provisions (which relate to the use of savings for augmenting items for the payment of the pension differentials) of the GAA is tantamount to dictating to the Judiciary how its funds should be utilized. The veto impairs the power of the Chief Justice to augment other items in the Judiciary's appropriation, in contravention of the constitutional provision on "fiscal autonomy".

Philippine Constitutional Association (PHILCONSA) v. Enriquez
GR 113888, 235 SCRA 506 [Aug 19, 1994]
See under this section, p. 80, issue (2), first paragraph

POWER OF TAXATION
Art VI, Sec 28.

[117] "*Item" and "provision," distinguished*. An *item* in a bill x x x is an indivisible sum of money dedicated to a stated purpose. [It] refers to the particulars, the details, the distinct and severable parts x x x of the bill. [It is] in itself a specific appropriation of money, not some *general provision of law* (*Bengzon v. Drilon*, 208 SCRA 133, 143)

[118] Enjoyed also by the Constitutional Commissions and the Ombudsman

VAT satisfies all the requirements of a valid taxation scheme: it is uniform and it is equitable.

Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan
GR 81311, 163 SCRA 371 [Jun 20, 1988]

Facts. Four cases consolidated. All seek to nullify EO 273 issued by Pres. Aquino on 25 July 1987, which, among others, adopted the VAT. Petitioners aver, among others, that VAT is oppressive, discriminatory, regressive and unjust contrary to *Art VI, Sec 28(1)* of the Constitution.

Issue. Is VAT oppressive, discriminatory, regressive and unjust?

Held. No. The petitioners' assertions in this regard are not supported by facts and circumstances to warrant their conclusions. As the Court sees it, EO 273 satisfies all the requirements of a valid tax. It is *uniform.*[119] The sales tax adopted in EO 273 is applied similarly on all goods and services sold to the public, which are not exempt, at the constant rate of 0% or 10%. It is also *equitable*. It is imposed only on sales of goods or services by persons engaged in business with an aggregate gross annual sales exceeding P200,000. Small corner *sari-sari* stores are consequently exempt from its application. Likewise exempt from the tax are sales of farm and marine products, so that the costs of basic food and other necessities, spared as they are from the incidence of the VAT, are expected to be relatively lower and within the reach of the general public. There is also no merit in the contention that it unduly discriminates against customs brokers. The exception of customs brokers in the section on exemptions from the VAT only mean to compliment said section with the preceding section which imposes VAT on sale of services that includes the those performed by customs brokers.

An enterprise is charitable if exists to carry out a purpose recognized in law as charitable, and not for gain, profit, or private advantage. A charitable institution does not lose its character as such simply because it derives income so long as the money received is devoted to the charitable object.

What is exempted under Sec 28(3), Art VI is not the charitable institution itself but its real property actually, directly and exclusively used for religious, charitable or educational purposes.

Lung Center of the Philippines v. Quezon City
GR 144104 [June 29, 2004]

Facts. Petitioner *LCP* is a non-stock, non-profit entity which owns a parcel of land in Quezon City and the hospital building constructed thereon. Both the land and the hospital building were assessed for real property taxes. Petitioner claims exemption from real property taxes pursuant to Sec 28(3), Art VI of the Constitution.

It appears that a big space at the ground floor of the hospital building is being leased to private parties, for canteen and small store spaces, and to medical or professional practitioners who use the same as their private clinics for their patients whom they charge for their professional services. A big portion on the right side of the building is being leased for commercial purposes to a private enterprise—the Elliptical Orchids and Garden Center. While LCP accepts paying and non-paying patients alike, LCP alleges that a minimum of 60% of its hospital beds are exclusively used for charity patients and the major thrust of its hospital operation is to serve charity patients. LCP also receives annual subsidies from the govt. It appears LCP spends the income it receives, including the subsidies from the govt for its patients and for the operation of the hospital.

*Issue*s.

(1) Is LCP a charitable institution?
(2) Conceding that LCP is a charitable institution, is it exempt from real property tax?

Held.

(1) Yes. The test whether *an enterprise is charitable* or not is whether it *exists to carry out a purpose recognized in law as charitable* or whether it is maintained for gain, profit, or private advantage. In the legal sense, a *charity* may be defined as a *gift for the benefit of an indefinite number of persons*. It may be applied to almost anything

[119] *Uniformity* in taxation has been defined as to mean that *all taxable articles* or kinds of property *of the same class* shall be *taxed at the same rate*. (*Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, 163 SCRA 283)

that tend to promote the well-doing and well-being of social man. In this case, a reading of the law creating the LCP and its Articles of Incorporation show that its medical services are to be rendered to the public in general in any and all walks of life including [the poor and the rich] without discrimination.

As a general principle, *a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income* from paying patients, or receives subsidies from the government, *so long as the money received is devoted or used altogether to the charitable object* which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.

(2) No. *What is exempted under Sec 28(3), Art VI* of the Constitution is not the institution itself but *the lands, buildings and improvements actually, directly and exclusively used*[120] *for religious, charitable or educational purposes*.[121]

Thus, the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are *not exempt* from real property taxes because these are not actually, directly and exclusively used for charitable purposes. The portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying—being actually, directly and exclusively used for charitable purposes—are *exempt* from real property taxes.

[120] "Dominantly used" or "principally used" cannot be substituted for "exclusively used" without doing violence to the Constitution. "Solely" is synonymous with "exclusively." If real property is used for one or more commercial purposes, it is not exclusively used.

What is meant by *actual, direct and exclusive use* of the property for charitable purposes is the *direct and immediate and actual application of the property itself to the purposes for which the charitable institution is organized*. It is *not* the *use of the income* from the real property that is determinative of whether the property is used for tax-exempt purposes. (*LCP v. QC*, GR 144104 [2004])

[121] In order to be entitled to tax exemption Sec 28(3), Art VI of the Const., one must prove by clear and unequivocal proof that (a) it is a charitable institution, and (b) its real properties are actually, directly and exclusively used for charitable purposes. (*Ibid.*)

The lands, buildings and improvements should not only be "exclusively" but also "actually and directly" used for religious, charitable or educational purposes to be tax-exempt.

Province of Abra v. Hernando

No. L-49336, 107 SCRA 104 [Aug 31, 1981]

Facts. Private respondent, the Roman Catholic Bishop of Bangued, Inc., sought to be exempted from tax and filed an action for declaratory relief. The *Province of Abra* filed a motion to dismiss said action but it was *summarily* denied by Judge *Hernando*. Petitioner asserts due process was violated as due course was given to the petition of private respondent for declaratory relief without allowing petitioner to answer and without any hearing. When asked to comment, Judge Hernando answered that there "is no question that the real properties sought to be taxed by the Province of Abra are properties of the [private] respondent" and followed that "likewise, there is no dispute that the properties including their produce are *actually, directly and exclusively* used by the [private respondent]] for religious or charitable purposes".

Issue. Was Judge Hernando correct in finding that because the real properties are owned by the Roman Catholic Bishop… then it follows that the properties are actually, directly and exclusively used for religious or charitable purposes?

Held. No. There is a marked difference between the provisions on taxation under the 1935 and the 1973 Constitutions. The former only states that "xxx all lands, buildings, and improvements used *exclusively* for religious, charitable or educational purposes shall be exempt from taxation".[122] The latter charter required that for the exemption of "lands, buildings and improvements", they should not only be "exclusively" but also "*actually and directly*" used for religious or charitable purposes. With the Constitution worded differently, [past decisions should not have been

[122] The 1935 charter provides: "cemeteries, churches and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable or educational purposes shall be exempt from taxation". The 1971 charter added "charitable institutions, mosques, and non-profit cemeteries" (Province of Abra v. Hernando, (1981), p108)

relied on and] the change should not have been ignored which Judge Hernando did. It should be duly taken into consideration. There must be proof therefore of *actual* and *direct* use of the property for religious or charitable purposes for it is well-settled that exemption from taxation is not favored and is never presumed. Petitioner is thus fully justified in invoking protection of procedural due process.

"Exclusively used for educational purposes" comprehends as well facilities which are incidental to and reasonably necessary for the accomplishment of the main purpose — educational.

Abra Valley College, Inc. v. Aquino
No. L-39086, 162 SCRA 106 [Jun 15, 1988]

Facts. Notice of Seizure and, subsequently, of Sale of a lot and building of petitioner *Abra Valley College* were issued for the satisfaction of their non-payment of real estate taxes. In seeking to declare the seizure and sale of their properties void, Abra Valley contends that the primary use, which is claimed by them to be the determining factor in the supposed exemption from tax, of the lot and building was for educational purposes. Notably, the 2nd floor of the building is used for residential purposes by the Director and his family and the 1st floor is being leased to the Northern Marketing Corporation.

Issue. Are the properties used "exclusively" for educational purposes so that it should be exempt from tax?

Held. No. The main issue is the proper interpretation of the phrase "used exclusively for educational purposes". xxx [E]mphasis has always been made that exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purpose. In other words, the use in this case of the school building or lot for commercial purposes is neither contemplated by law, nor by jurisprudence. Thus while the use of the second floor of the main building in the case at bar for residential purposes of the Director and his family, may find justification under the concept of incidental use, which is complimentary to the main or primary purpose (education), the lease of the first floor thereof xxx cannot by any stretch of the imagination be considered incidental to the purpose of education.

POWER OF APPROPRIATION
Art VI, Sec 29.

Public funds may not be appropriated for any purpose other than a public purpose. The circumstance that the appropriation in furtherance of a private purpose incidentally benefits the general public does not justify the defect.

Pascual v. Sec. of Public Works
No. L-10405, 110 Phil 331 [Dec 29, 1960]

Facts. Respondent Zulueta, a member of the Senate, was the owner of several parcels of residential land situated in Pasig, Rizal, known as the Antonio Subdivision. Certain portions of the Antonio Subdivision had been reserved for the projected feeder roads. For the "construction, reconstruction, repair, extension and improvement" of said feeder roads, Congress passed RA 920, appropriating P85,000 therefor. After over 5 months subsequent to the approval and effectivity of the Act, the projected feeder roads were donated by Zulueta to the Government. Petitioner *Pascual*, as Governor of Rizal, filed an action questioning the constitutionality of the appropriation for the feeder road. The lower court held that the appropriation was clearly for a private, not a public purpose.

Issue. Is the provision in RA 920 appropriating the said amount unconstitutional?

Held. Yes. Under the express and implied provisions of the Constitution, *the legislature is without power to appropriate public revenue*[123] *for anything but a public purpose*… It is the essential character of the direct object of the expenditure which must determine its validity xxx, and not the magnitude of the interest to be affected nor the degree to which the general advantage of the community [may be promoted]. *Incidental* [*benefit*] to the public or to the state, [resulting] from the promotion of

[123] The right of the legislature to appropriate funds is correlative with its right to tax. (*Pascual v. Sec of Public Works*, No. L-10405)

private interest and the prosperity of private enterprises or business, does not justify their (the private enterprise) aid by the use public money.

In the case at bar, the property sought to be improved with public funds was private in nature at the time the appropriation was made. Hence, the appropriation sought a *private* purpose and is thus null and void. The circumstance that the roads were later donated to the government did not cure such basic defect.

As the purported religious benefit is not contemplated and is merely incidental to the main purpose which is legitimate, appropriation made therefor does not violate Art VI, Sec 29 (2).

Aglipay v. Ruiz

No. L-45459, 64 Phil 201 [Mar 13, 1937]

See under *Article II. FUNDAMENTAL PRINCIPLES and STATE POLICIES,* p. 28, issue (2)

The Government budgetary process has been graphically described to consist of four major phases.[124]

[124] The government budgeting process:

(1) *Budget preparation*. Essentially tasked upon the Executive Branch. Covers the estimation of government revenues, the determination of budgetary priorities and activities within the constraints imposed by *available revenues* and by *borrowing limits,* and the translation of desired priorities and activities into expenditure levels.

(2) *Legislative authorization*. Congress deliberates or *acts* on the budget proposals of the President, and Congress in the exercise of its own judgment and wisdom *formulates* an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law.

(3) *Budget Execution*. Tasked on the Executive. Covers the various *operational* aspects of budgeting. Comprised of the establishment of obligation authority ceilings, the evaluation of work and financial plans for individual activities, the continuing review of government fiscal position, the regulation of funds releases, the implementation of cash payment schedules, and other related activities.

(4) *Budget accountability*. Evaluation of actual performance and initially approved work targets, obligations incurred, personnel hired and work accomplished—compared with the targets set at the time the agency budgets were approved. (*Guingona v. Carague*, GR 94571)

The Constitution requires no specific form in making appropriations but only that it be made by law —Art VI, 29(1)

Guingona v. Carague

GR 94571, 196 SCRA 221 [Apr 22, 1991]

Facts. Petitioners assail the constitutionality of the automatic appropriation for foreign debt service in the 1990 budget. Petitioners contend that the 3 presidential decrees authorizing such automatic appropriation violate *Sec 29 (1), Art VI* of the Constitution. It is asserted, among others, that it did not meet the alleged required definiteness, certainty, and exactness in appropriation, and so it is an undue delegation of legislative power as the President, by virtue of which, determines in advance the amount appropriated for the debt service.

Issue. Is the automatic appropriation for debt service in the 1990 budget violative of Art VI, Sec 29 (1) of the Constitution?

Held. No. Our Constitution does not require a *definite, certain, exact or "specific* appropriation made by law" unlike the Nebraska Constitution invoked by petitioners. Our Constitution simply states that moneys paid out of the treasury must be made pursuant to an appropriation made by law. More significantly, our Constitution does not prescribe any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be "made by law" such as precisely the authorization under the questioned presidential decrees. In other words xxx an appropriation may be made impliedly (as by past but subsisting legislations) as well as expressly for the current fiscal year (as by enactment of laws by the present Congress). The Congressional authorization may be embodied in annual laws, such as a general appropriations act or in special provisions of laws of general or special application which appropriate public funds for specific public purposes, such as the questioned decrees.

Osmeña v. Orbos
GR 99886, 220 SCRA 703 [Mar 31, 1993]

Facts. By PD 1956, a special account in the general fund designated as the Oil Price Stabilization Fund (OPSF) was created. The OPSF was designed to minimize frequent price changes by reimbursing oil companies for the cost increases brought about by exchange rate adjustments and increases in the world market price of oil. Subsequently, by EO 1024, the OPSF was reclassified into a "trust liability account" and was ordered released from the National Treasury to the Ministry of Energy. The same EO also authorized the investment of the fund in govt securities, with the earnings from such accruing to the fund. As the OPSF is now in a balance deficit, the Energy Regulatory Board issued an order approving the increase in pump prices of petroleum products. Petitioner avers that the reclassification is a violation of *Sec 29(3), Art VI* of the Constitution as it authorized the monies collected for the OPSF to be channeled to another govt objective and not maintained in a special account in the general fund. He maintains the monies collected for the OPSF must be treated as a "special fund" and not a "trust account"

Issue. Is the "trust liability account" violative of Sec 29(3), Art VI of the Constitution?

Held. No. Petitioner's averment is premised on the view that the powers granted to the ERB partake of the nature of the taxation power of the State. It assumes that the OPSF is a form of revenue measure drawing from a special tax to be expended for a special purpose. This is not quite correct. It is right to say that the stabilization fees collected are in the nature of a tax. The fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them State funds. However, t*he tax collected is not in a pure exercise of the taxing power*. *It is levied with a regulatory purpose, to provide a means for the stabilization of [oil prices]. The levy is primarily in the exercise of the police power of the State*. Moreover, that the OPSF is a special fund is plain from the fact that it is segregated from the general fund; and while it is placed in what the law refers to as a "trust liability account," the fund nonetheless remains subject to the scrutiny and review of the Commission on Audit. The Court is satisfied that these measures comply with the constitutional description of a "special fund."

Philippine Constitutional Association (PHILCONSA) v. Enriquez
GR 113888, 235 SCRA 506 [Aug 19, 1994]
See under this section, p. 80, issue (2), last paragraph

LIMITATION ON LEGISLATIVE POWER — Appellate Jurisdiction of the Supreme Court
Art VI, Sec 30.

A law increasing the appellate jurisdiction of the SC without its advice and concurrence is invalid — Art VI, Sec 30.

First Lepanto Ceramics, Inc. v. Court of Appeals
GR 110571, 237 SCRA 519 [Oct 7, 1994]
See under *Article VIII. JUDICIAL DEPARTMENT,* p. 130

Diaz v. Court of Appeals
GR 109698, 238 SCRA 785 [Dec 5, 1994]

Facts. Davao Light and Power Company, Inc. (DLPC) filed with the Energy Regulatory Board (ERB) an application for the approval of the sound value appraisal of its property and service. ERB approved the application but deducted P14.8M worth of property and equipment. Claiming grave abuse of discretion, petitioners filed a petition for *certiorari* with the SC. SC referred the case to the CA, holding that a petition for *certiorari* with the SC is the wrong mode of appeal. CA dismissed the case, hence this instant petition.

Notably, EO 172, promulgated months after the effectivity of the 1987 Constitution, provides that decisions of the ERB are appealable by way of review to the SC. Later in Feb 1991, the SC promulgated Circular No. 1-91[125] which specifically provides that the proper mode of appeal from any

[125] See Appendix C, p. 176

quasi-judicial agency, including ERB, is by way of a petition for review with the *Court of Appeals.*

Issue. Does appeal lie with the SC?

Held. No. EO 172 was enacted without the advice and concurrence of the SC. Hence, the provision therein providing for the appeal to SC by petition for review from decisions of the ERB never became effective. Consequently, the authority of the Court of Appeals to decide cases from the ERB remains.

Mandate to Provide for a SYSTEM OF INITIATIVE AND REFERENDUM Art VI, Sec 32.

The Constitution clearly includes not only ordinances but resolutions as appropriate subjects of a local initiative.

Subic Bay Metropolitan Authority v. COMELEC

GR 125416, 262 SCRA 292 [Sept 26, 1996]

Facts. The Sangguniang Bayan of Morong, Bataan issued Resolution No. 10 expressing its absolute concurrence to join the Subic Special Economic Zone. Private respondents, on several grounds, sought to annul the Res. No. 10 by filing a petition with the Sangguniang Bayan. Private respondents were told that some of their prayers in the petition were acted upon already. Not satisfied, private respondents filed a petition for local initiative for the annulment sought. It was denied by the *COMELEC*. Thereafter, COMELEC issued a resolution adopting a calendar of activities for local referendum on a certain municipal ordinance passed by the Sangguniang Bayan of Morong, followed by another resolution providing for the rules and guidelines for the conduct of the referendum proposing to annul or repeal Res. No. 10. Petitioner now contests the validity of the [latter] COMELEC resolution.

Issue. Can the people of Morong, Bataan file a petition for local initiative to annul a resolution?

Held. Yes. The *Constitution clearly includes not only ordinances but resolutions as appropriate subjects of a local initiative*. Sec 32 of Art VI provides in luminous language: "The Congress shall xxx provide for a system of initiative and referendum, xxx whereby the people can directly propose and enact laws or approve or reject any *act* or law or part thereof passed by the Congress, or local legislative body xxx." An "*act*" *includes a resolution*. Black defines an "act" as "an expression of will or purpose xxx it may denote something done xxx as a legislature, including not merely physical acts, but also decrees, edits, laws, judgments, resolves, awards, and determinations xxx."

EXECUTIVE POWER
Art VII, Sec 1.

The powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. Executive power is more than the sum of specific powers enumerated.

Residual unstated powers of the President are implicit in and correlative to the paramount duty residing in that office to safeguard and protect general welfare.

Marcos v. Manglapus
GR 88211, 177 SCRA 669 [Sept 15, 1989]

Facts. Only about 3 years after Pres. Aquino replaced Marcos, the latter, in his deathbed, has signified his wish to return to the Philippines to die. But Pres. Aquino, considering the dire consequences of his return to the nation at a time when the stability of government is threatened from various directions and the economy is just beginning to rise and move forward, has stood firmly on the decision to bar his and his family's return. The *Marcoses* now seek to enjoin the implementation of Pres. Aquino's decision, invoking their constitutionally guaranteed liberty of abode and right to travel.

Issue. Is the President granted power in the Constitution to prohibit the Marcoses from returning to the Philippines?

Held. Yes. It would not be accurate to state that "executive power" is the power to enforce the laws, for the President is head of state as well as head of government and whatever powers inhere in such positions pertain to the office unless the Constitution itself withholds it. Although the Constitution imposes limitations of the exercise of specific powers[126] of the President, it maintains intact what is traditionally considered as within the scope of "executive power." Corollarily, the *powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution*. Executive power is more than the sum of specific powers so enumerated. More particularly, this case calls for the exercise of the President's powers as protector of the peace. The President is also tasked with xxx ensuring domestic tranquility xxx. The demand of the Marcoses to be allowed to return to the Philippines xxx must be treated as a matter that is appropriately addressed to those *residual unstated powers of the President* which are *implicit in* and correlative to the *paramount duty residing in that office to safeguard and protect general welfare*. There exists factual basis for the President's decision. The Court cannot xxx pretend the country is not besieged from within xxx. xxx the catalytic effect of the return of the Marcoses xxx may prove to be the proverbial final straw that would break the camel's back. With these before her, the President cannot be said to have acted arbitrarily and capriciously xxx in determining that the return of the Marcoses poses a serious threat to the national interest and welfare and in prohibiting their return. The Court voted 8-7.

Marcos v. Manglapus
GR 88211, 178 SCRA 761 [Oct 27, 1989]

[126] The Court enumerated the *specific powers of the President*: the power of control over all executive departments, bureaus and offices, the power to execute the laws, the appointing power, the powers under the commander-in-chief clause, the power to grant reprieves, commutations and pardons, the power to grant amnesty with the concurrence of Congress, the power to contract or guarantee foreign loans, the power to enter into treaties or international agreements, the power to submit the budget to Congress, and the power to address Congress [Art VII, Secs 14-23] (*Marcos v. Manglapus*, 177 SCRA 689)

Facts. On Sept 28, 1989, F. Marcos died in Honolulu, Hawaii. Pres. Aquino insisted still to bar the return of the *Marcoses* including the former President's remains. The Marcoses filed this motion for reconsideration.

Issue. Is the President granted power in the Constitution to prohibit the Marcoses from returning to the Philippines?

Held. Yes. No compelling reasons have been established by the Marcoses to warrant a reconsideration of the Court's decision. The death of F. Marcos has not changed the factual scenario. The threats to the govt, to which the return of the Marcoses has been viewed to provide a catalytic effect, have not been shown to have ceased. It cannot be denied that the President upon whom executive power is vested, has unstated residual power which are implied from the grant of executive power which are necessary for her to comply with her duties. This is so, notwithstanding the avowed intent of the framers of the Constitution to limit the powers of the President for *the result was a limitation of specific powers of the President, particularly those relating to the commander-in-chief clause, but not a diminution of the general grant of executive power*. The Court retained their voting: 8-7.

Presidential immunity from suit does NOT impose a correlative disability to file suit. The privilege may also be waived by the President if so minded.

Soliven v. Makasiar
No. L-82585, 167 SCRA 393 [Nov 14, 1988]

Facts. Three cases were consolidated. A libel case was filed against petitioner Beltran in which Pres. Aquino herself was the complainant. In his defense, Beltran contended, among others, that the reason which necessitate presidential immunity from suit impose a correlative disability to file suit for if criminal proceedings would ensue, the President may have to be brought under the trial court's jurisdiction.

Issue. Does the presidential immunity from suit impose a correlative disability to file suit?

Held. No. The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance of distraction considering that being the Chief Executive is a job that demands undivided attention. But this privilege of immunity from suit pertains to the President by virtue of the office; and it may be invoked only by the holder of the office, not by any other person in the President's behalf. Thus, an accused in a criminal case in which the President is the complainant cannot raise the presidential privilege as a defense to prevent the case from proceeding against such accused. Moreover, there is nothing in our laws that would prevent the President from waiving the privilege and submit to the court's jurisdiction if so minded.

CANVASSING THE VOTES FOR PRESIDENT AND VICE-PRESIDENT
Art VII, Sec 4.

COMELEC may not conduct an unofficial advanced tabulation of the votes for President and Vice-President because Congress has the sole and exclusive authority to canvass the votes for the election of President and Vice-President.

Brillantes v. COMELEC
GR 163193 [June 15, 2004]

Facts. Pursuant to RA 8436,[127] respondent *COMELEC* adopted an Automated Election System (AES) modernization program for the 2004 elections consisting of 3 phases.[128] Phases I and II failed, but COMELEC nevertheless pursued Phase III through advanced electronic transmission of "unofficial" results of the 2004 elections for provincial, municipal and also national positions *including that of the President and Vice-President* (a.k.a the

[127] RA 8436 authorized COMELEC to use AES for the process of voting, counting of votes and canvassing/consolidating the results of the national and local elections.

[128] The AES modernization program:
Phase I. Computerized system of registration and voters validation
Phase II. Computerized voting and counting of votes
Phase III. Electronic transmission of results.

N.B. Phase III was functionally intended to be an interface of Phases I and II.

"unofficial quick count" project). COMELEC issued Res. No. 6712 for the purpose.[129]

Petitioners assail the constitutionality of Res. No. 6712 for, among others, effectively pre-empting the sole and exclusive authority of Congress under Art VII, Sec 4 of the Constitution to canvass the votes for President and Vice-President.

COMELEC argues that its advanced quick count of the votes for the President and Vice-President is not prohibited by the Constitution because it is "unofficial".

Issue. Does Res. No. 6712 violate Art VII, Sec 4?

Held. Yes. Res. No. 6712 usurps, under the guise of an "unofficial" tabulation of election results based on a copy of the election returns, the sole and exclusive authority of Congress to canvass the votes for the election of President and Vice-President.

COMELEC's above-stated argument is puerile and totally unacceptable. If the COMELEC is proscribed from conducting an official canvass of the votes cast for the President and Vice-President, the COMELEC is, with more reason, prohibited from making an "unofficial" canvass of said votes.

INHIBITIONS
Art VII, Sec 13.

Direct interest is NOT necessary. It suffices that there is indirect interest. The Constitution prohibits the President, Vice-President, the Cabinet members and their deputies or assistants from DIRECTLY OR INDIRECTLY participating in any business with the govt.

[129] Res. No. 6712 instructed that the votes for the President and Vice-President, among others, shall be encoded (based on the copies for the election returns intended for COMELEC) in Electronic Transmission Centers (ETCs) to be located in every city and municipality. The ETCs shall then transmit the data to a National Consolidation Center. The consolidated and per-precinct results shall then be made available via the Internet, text messaging, and electronic billboards in designated locations.

Doromal v. Sandiganbayan
GR 85468, 177 SCRA 354 [Sept 7, 1989]

Facts. Incumbent PCGG Commissioner *Doromal* was president and director of a family corporation, the Doromal International Trading Corporation (DITC), which submitted bids to supply equipment to the Dept of Education, Culture and Sports (DECS) and the National Manpower and Youth Council (NYMC). Both DECS and NYMC are agencies of the govt. A criminal case was filed against Doromal in the *Sandiganbayan* for violating *Art VII, Sec 13* of the Constitution as well as other laws.[130] Doromal moved to quash the information against him on the ground that the special prosecutor admitted that he does not possess any document signed and/or submitted to DECS by him after he became PCGG Commissioner, which fact, according to him, belies his participation in the business of the DITC. Sandiganbayan denied the motion hence this petition for review.

Issue. Is a document duly signed or submitted by Doromal to DECS, which would signify his direct participation in the business, necessary to file the criminal case against him?

Held. No. The presence of a signed document bearing the signature of accused Doromal as part of the application to bid xxx is not a *sine qua non*. Doromal "can rightfully be charged xxx with having participated in a business" which act is absolutely prohibited by *Sec 13 of Art VII* of the Constitution because "the DITC remained a family corporation in which Doromal has at least an *indirect* interest."

The prohibition of public officials from holding ANY other office or employment is absolute, all-embracing (encompassing both govt and private employment) and particular (and thus not applicable to all appointive officials) to the President, VP, Cabinet members, their undersecretaries and assistant secretaries as such was the intention of the framers of the Constitution.

However, the prohibition does not comprehend additional duties and functions performed by them in an ex officio capacity as provided by law.

[130] Anti-Graft and Corrupt Practices Act and Civil Service Law

Civil Liberties Union v. Executive Secretary
GR 83896, 194 SCRA 317 [Feb 22, 1991]

Facts. Petitioners assail the constitutionality of EO 284 which ostensibly restricted the number of positions that Cabinet members, their undersecretaries and assistant secretaries and other appointive officials may hold in addition to their primary position but in effect allowed them to hold multiple positions contrary to *Art VII, Sec 13* of the Constitution.[131] In averring that EO 284 creates an exception to the rule in Art VII, Sec 13, respondents contend that the phrase "unless otherwise provided in the Constitution" in said section makes reference to Art IX-B, sec 7(2)[132] insofar as appointive officials mentioned therein are concerned.

Issue. Does the prohibition in *Art VII, Sec 13* of the Constitution insofar as Cabinet members, their undersecretaries and assistant secretaries are concerned admit of the broad exceptions made for appointive officials in general under Art IX-B, Sec 7(2) of the same?

Held. No. Art IX-B, sec 7(2) is meant to lay down the general rule applicable to appointive public officials, while Art VII, Sec 13 is meant to be the exception applicable particularly to the President, Vice-President, Cabinet Members, their deputies and assistants.[133] Thus, while all other appointive officials in the civil service are allowed to hold other office or employment during their tenure when such is allowed by law or by the primary functions of their positions, Cabinet members, their deputies and assistants may do so only when expressly authorized by the Constitution. EO 284 is thus null and void as it is repugnant to Art VII, sec 13. It was noted, however, that *the prohibition* against the holding of any other office or employment by the Pres., VP, Cabinet members, and their deputies or assistants during their tenure (provided in Sec 13, Art VII) *does not comprehend additional duties and functions required by the primary functions of the officials concerned who are to perform them in an ex officio capacity*[134] *as provided by law*.

De la Cruz, et al. v. Commission on Audit
GR 138489 [Nov 29, 2001]

Facts. Petitioners *De la Cruz et al*. were sitting as "alternates" of the Cabinet members mandated by law to sit as members of the NHA Board of Directors. Their acts are "considered the acts of their principals."

Pursuant to *Civil Liberties Union v. Exec Sec* (1991), respondent *COA* issued a Memorandum calling for, among others, the disallowance of payments of representation allowances and per diems of "Cabinet

[131] The pertinent provision of the assailed EO read: "Even if allowed by law or by the ordinary functions of his position, a member of the Cabinet, undersecretary or assistant secretary or other appointive officials of the Executive Department may, in addition to his primary position, hold not more than two positions in the government and government corporations"

[132] [Civil Service Commission] Art IX-B, sec 7(2): Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including Government-owned or controlled corporations or their subsidiaries

[133] In the case at bar, there seemed to be a contradiction between Art IX-B, sec 7 and Art VII, sec 13 of the Constitution. One section is not to be allowed to defeat another if by any reasonable construction the two can be made to stand together. The intent of the framers of the Constitution was to impose a stricter prohibition on the President and his official family insofar as holding other offices or employment in the govt or elsewhere is concerned. If the contention of the respondents is adopted, the aforestated intent of the framers would be rendered nugatory. It must therefore be departed from (*Civil Liberties Union v. Exec Sec,* 194 SCRA 317)

[134] "*Ex-officio*." – means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." Also denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority than that conferred by the office." An *ex-officio* member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment. To illustrate, by express provision of law, the Secretary of Transportation and Communications is the *ex-officio* Chairman of the Board of the Philippine Ports Authority, and the Light Rail Transit Authority.

The ex-officio position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution. (*Ibid.*)

members who were the *ex-officio* members of the NHA Board… and/or their respective alternates who actually received the payments." De la Cruz et al. appealed the disallowance to COA but was denied. Hence this petition.

Issue. Are the alternates of the *ex-officio* members of the NHA Board entitled to receive compensation in addition to their salary?

Held. No. The Court reiterated *Civil Liberties Union v. Exec Sec* (1991) which stated that "[t]he *ex-officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position.[135] x x x For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution."[136]

Since the Executive Dept Secretaries, as *ex-officio* members of the NHA Board, are prohibited from receiving "extra (additional) compensation," it follows that De la Cruz et al. who sit as their alternates cannot likewise be entitled to receive such compensation. A contrary rule would give petitioners a better right than their principals.

THE APPOINTING POWER, and limitations
Art VII, Sec 15.

Ad interim appointments are intended to prevent a hiatus in the discharge of official duties in cases of vacancy occurring during the recess of Congress.

[135] To illustrate, "[i]t should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-officio* member thereof, he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary banking matters, which come under the jurisdiction of his department." (*De la Cruz v. COA*, GR 138489 [1991])

[136] See previous case digest, fn 134, p. 95

The purpose of Sec 15 is to prevent abuse of the appointing power, and is directed against two types of appointments: (1) those made for buying votes; (2) those made for partisan considerations (e.g. "midnight" appointments of an outgoing President).

Aytona v. Castillo, et al.
No. L-19313, 4 SCRA 1 [Jan 19, 1962]

Facts. On Dec 29, 1961, incumbent Pres. Garcia issued mass *ad interim* "midnight" or "last minute" appointments amounting to about 350 all in all. Among the appointees was petitioner *Aytona* as *ad interim* Governor of Central Bank. Aytona qualified for the appointment in the same day. The next day, at noon, President-elect Macapagal assumed office. He issued AO 2 which withdrew and cancelled all the said midnight *ad interim* appointments by his predecessor. On Jan 1, 1962, respondent *Castillo* was appointed by Pres. Macapagal in place of Aytona. Insisting he validly holds the position of Governor, Aytona instituted this original action.

Issue. Does the new President have the power to issue the order of cancellation of the *ad interim* appointments made by the past President, even after the appointees have already qualified?

Held. Yes. Such mass midnight *ad interim* appointments may be regarded as an abuse of presidential prerogatives for apparently mere partisan considerations. When the President makes *ad interim* appointments, he exercises a special prerogative and is bound to be prudent to insure approval of his selection either by previous consultation with the members of the Commission on Appointments (CA) or by thereafter explaining to them the reason for such selection.[137] Where, however, as in this case, the CA that will consider the appointees is different from that existing at the time of the appointment (for the 4th Congress expired at midnight Dec 29, 1961) and where the names are to be submitted by his successor, who may not wholly approve of the selections, the President should be doubly careful. Now, it is hard to believe that in signing 350 appointments in one night, Pres. Garcia exercised such "double care"; and therefore, it seems to be tenable that these appointments fall beyond the intent and spirit of the

[137] Normally, the President has the benefit of the advice of CA when he makes appointments with their consent (*Aytona v. Castillo, et al.*, 4 SCRA 1, 10)

constitutional provision granting to the Executive authority to issue *ad interim* appointments. Moreover, the underlying reason for denying the power to revoke after the appointee has qualified is the latter's equitable rights. Yet it is doubtful if such equity might be set up as in the present case, considering the hurried maneuvers detracting from that degree of good faith, morality and propriety which form the basic foundation of claims to equitable relief. Action dismissed.

In Re: Hon. M.A. Valenzuela and Hon. P.B. Vallarta

AM No. 98-5-01-SC, 298 SCRA 408 [Nov 9, 1998]

Facts. The Judicial and Bar Council (JBC) had previously resolved that appointments to the judiciary were not included in the period of ban imposed by Art VII, sec 15 of the Constitution. In the light of the upcoming elections on May 12, 1998, the Chief Justice (CJ) deferred to act on the appointments for justices to the Court of Appeals transmitted to him by the President on Apr 6 for such were dated Mar 11[138] which indicated that the President impliedly considered that appointments to the judiciary were included in the period of ban imposed by *sec 15, Art VII* of the Constitution notwithstanding the JBC's previous resolution. In view thereof, said provision seemed to be in conflict with Secs 4(1) and 9 of Art VIII which required any vacancy in the Supreme Court and lower courts to be filled within 90 days. Pending resolution, allegedly in the interest of public service, *Valenzuela* and *Vallarta* were appointed as judges of the RTC. Such appointments dated Mar 30, 1998 were transmitted to the CJ on May 12. The Court resolved to consider the case an administrative matter for if the CJ undertakes his obligation to transmit the appointments to the appointees, he runs the risk of acting contrary to Sec 15, Art VII of the Constitution.

Issue. May the President, in the interest of public service, make appointments to the judiciary in view of sections 4(1) and 9, Art VIII of the Constitution during the period of the ban imposed by *sec 15, Art VII*?

Held. No. *Secs 4(1) and 9, Art VIII simply mean that the President is required to fill vacancies in the courts within the time frames provided therein unless prohibited by sec 15, Art VII. Sec 15, Art VII is directed against two types of appointments: (1) those for buying votes and (2) those made for partisan considerations*. The first are similar to those which are declared election offenses in the Omnibus Election Code (OEC). Under the OEC, giving or promising any office or employment in order to induce anyone to vote for or against any candidate… is considered vote-buying and is prohibited. The Court concluded that the prevention of vote-buying xxx outweighs the need for avoiding delays in filling up of court vacancies. The appointments were declared void.[139]

The ban on making presidential appointments around the time of presidential elections in Sec 15 is confined to appointments in the Executive Dept. It does NOT extend to the Judiciary.

The filling of a vacancy in the SC within the 90-day period prescribed by Sec 4(1), Art VIII was made a true mandate for the President.

De Castro v. Judicial and Bar Council

GR 191002 [Mar 17, 2010]

Facts. The 2010 presidential election is forthcoming. C.J. Puno is set to retire on 17 May 2010 or 7 days after the presidential election. January 2010, the JBC begun to take applications for the position of C.J. Meanwhile, strong objections to Pres. GMA's appointing C.J. Puno's successor arose. The instant petitions were thus filed questioning her authority to appoint a new C.J. in the light of the ban imposed on presidential appointments two months immediately before the next presidential elections up to the end of the President's term under *Sec 15, Art VII* of the Constitution. This view however seemingly conflicts with *Sec 4(1), Art VIII* which provides that any vacancy in the SC shall be filled within 90 days from the occurrence of the vacancy, and *Sec 9, Art VIII* which provides that the President shall issue appointments to the Judiciary within 90 days from submission by the JBC of the list of nominees.

[138] The day immediately before the commencement of the ban on appointments

[139] This ruling, insofar as it held that the appointment ban under Sec 15, Art VIII of the Constitution applied to appointments to the Judiciary, has been *reversed* in *De Castro v. JBC*, GR 191002 [2010]. See next case digest.

It is further argued that there is no imperative need to appoint the next Chief Justice considering that Sec 12 of the Judiciary Act of 1948 can still address the situation of having the next President appoint the successor. It provides that in case of a vacancy in the office of the C.J. or of his inability to perform the duties and powers of his office, they shall devolve upon the Associate Justice who is first in precedence, until such disability is removed, or another C.J. is appointed and duly qualified.

It is also argued that there is no need for the incumbent President to appoint during the prohibition period the successor of C.J. Puno because anyway there will still be about 45 days of the 90 days mandated in Sec 4(1), Art VIII remaining (the period that remains of the 90 days counted from C.J. Puno's retirement after the end of GMA's term).

Issues.

(1) Does the ban on making presidential appointments under Sec 15, Art VII extend to appointments to fill vacancies in the SC and in the rest of the Judiciary?
(2) Does Sec 12 of the Judiciary Act of 1948 dispel the imperative need to appoint a new C.J.?
(3) Does the fact that there will still be about 45 days after the prohibition period to comply with the mandate of the President to fill vacancies in the SC dispel the need for Pres. GMA to appoint C.J. Puno's successor?
(4) May the JBC be compelled by mandamus to submit to Pres. GMA a short list of nominees now?

Held.

(1) No. We reverse *Valenzuela*.[140] Had the framers intended to extend the prohibition contained in Sec 15, Art VII to the appointment of Members of the SC, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions.

The exchanges during deliberations of the Constitutional Commission further show that *the filling of a vacancy in the SC within the 90-day period was made a true mandate for the President*. This was borne out of the fact that 30 years hitherto, the Court seldom had a complete complement. Further, the usage in Sec 4(1), Art VIII of the word "shall"—an imperative—should not be disregarded.

Given the background and rationale for the prohibition in Sec 15, Art VII, undoubtedly, the Constitutional Commission confined the prohibition to appointments made in the Executive Dept.[141] The framers did not need to extend the prohibition to appointments in the Judiciary, because their establishment of the JBC and their subjecting the nomination and screening of candidates for judicial positions to the unhurried and deliberate prior process of the JBC ensured that there would no longer be midnight appointments to the Judiciary and appointments to the Judiciary for the purpose of buying votes in a coming presidential election, or of satisfying partisan considerations.

The fact that Secs 14 and 16 of Art VI[142] refer only to appointments within the Executive Dept. renders conclusive that Sec 15 of the same also applies only to the Executive Dept. This is consistent with the rule that every part of the statute must be interpreted with reference to the context. If the framers intended Sec 15 to cover all kinds of presidential appointments, they would have easily and surely inserted a similar prohibition.

To hold that Sec 15 extends to appointments to the Judiciary undermines the intent of the Constitution of ensuring the independence of the Judicial Dept. for it will tie the Judiciary and the SC to the fortunes or misfortunes of political leaders vying for the Presidency in a presidential election.[143]

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[140] *In Re: Hon. M.A. Valenzuela and Hon. P.B. Vallarta,* 298 SCRA 408. See previous case digest

[141] See syllabus for Aytona v. Castillo and In Re: Hon. M.A. Valenzuela and Hon P.B. Vallarta, p. 96

[142] Sec 14 speaks of the power of the succeeding President to revoke appointments made by an Acting President. Evidently, it refers only to appointments in the Executive Dept. It has no application to appointments in the Judiciary because temporary or acting appointments can only undermine the independence of the Judiciary due to their being revocable at will [which is contrary to the letter and spirit of the Constitution to safeguard independence of the Judiciary].

Sec 16 covers only the presidential appointments that require confirmation by the Commission on Appointments; and appointments to the Judiciary do not require such confirmation. (*De Castro v. JBC*, GR 191002 [2010])

[143] The Court further ruled that the wisdom of having the new President, instead of the current incumbent President, appoint the next Chief Justice is itself suspect, and cannot ensure judicial independence, because the appointee can also become beholden to the appointing authority. In contrast, the appointment by the incumbent President does not run

(2) No. The express reference to a Chief Justice [in *Sec 4(1), Art VIII*] *abhors the idea that the framers contemplated an Acting Chief Justice to head the membership of the Supreme Court*. Otherwise, they would have simply written so in the Constitution. Consequently, to rely on Sec 12 of the Judiciary Act of 1948 in order to forestall the imperative need to appoint the next Chief Justice soonest is to defy the plain intent of the Constitution. Said Sec 12 only responds to a rare situation in which the new C.J. is not yet appointed, or in which the incumbent C.J. is unable to perform the duties and powers of the office.

(3) No. The argument is flawed, because it is focused only on the coming vacancy occurring from C.J. Puno's retirement by 17 May 2010. It ignores the need to apply Sec 4(1) to every situation of a vacancy in the SC.

(4) No. For mandamus to lie, there should be unexplained delay on the part of JBC in performing its duty; and there has been no delay on the part of the JBC in submitting the list of nominees for C.J. to the President because the vacancy in the office has not yet occurred.

The President is constitutionally mandated to fill vacancies in the SC within 90 days *after* the occurrence of the vacancies. Thus, it is mandatory for the JBC to submit to the President the list of nominees *on or before the occurrence of the vacancy* in order to enable the President make the appointment within the 90-day period therefrom. This is a ministerial duty of the JBC.[144]

JBC therefore has until the date C.J. Puno retires, or 17 May 2010, to submit the list nominees to the President.

The Court is not obliged to follow blindly a decision that it determines to call for rectification.

Construction cannot supply the omission of the express extension of the ban in Sec 15, Art VII on appointments to the Judiciary, for doing so constitutes an encroachment upon the field of the Constitutional Commission.

De Castro v. Judicial and Bar Council
GR 191002 [Apr 20, 2010]

Facts. Petitioners and intervenors in *De Castro v. JBC* [Mar 17, 2010] filed the instant motions for reconsiderations. Most of the movants contend that the principle of *stare decisis* is controlling, and accordingly insist that the Court has erred in disobeying or abandoning *Valenzuela*. They also aver that the Court either ignored or refused to apply many principles of statutory construction. Movants insist that the ban in Sec 15, Art VII applies to appointments to the Judiciary under the principle of *verba legis*.[145] Since the only expressed exemption from the ban on midnight appointments in Sec 15 is the temporary appointment to an executive position, the ban must extend to appointments in the Judiciary; we should not distinguish where the law does not distinguish.

Issues.

(1) Did the Court err in abandoning *Valenzuela* under the principle of *stare decisis*?[146]

(2) Is the ban in Sec 15, Art VII applicable to appointments to the Judiciary under the principle of *verba legis*?

Held.

(1) No. The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, *the Court is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.* The Constitution itself recognizes the innate authority of the Court *en banc* to modify or reverse a doctrine or

the same risk of compromising judicial independence, precisely because her term will end by June 30, 2010. (*Ibid.*)

[144] The Court contrasted, however, that selection of nominees is discretionary upon the JBC. (*Id.*)

[145] *Principle of verba legis* – the literal meaning of the law must be applied when it is clear and unambiguous. (*De Castro v. JBC*, GR 191002 [Apr 20, 2010])

[146] *Stare decisis*, i.e. to adhere to precedent and not to unsettle things that are settled. It simply means that a principle underlying the decision in one case is deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority. (*Ibid*.)

principle of law laid down in any decision rendered *en banc* or in division.[147]

(2) No. Movants are self-contradictory. They disregarded the absence from Sec 15, Art VII of the express extension of the ban on appointments to the Judiciary, yet they insist that the ban is applicable to the Judiciary under the principle of *verba legis*. *Construction cannot supply the omission [of the express extension of the ban on appointments to the Judiciary], for doing so would generally constitute an encroachment upon the field of the Constitutional Commission.*[148]

Art VII, Sec 16.

It is an appointment (and not a designation) that results in security of tenure.

Binamira v. Garrucho, Jr.
GR 92008, 188 SCRA 154 [Jul 30, 1990]

Facts. In 1986, petitioner *Binamira*, as evidenced by the memorandum which allowed him to qualify, was *designated* General Manager (GM) of the Phil Tourism Authority (PTA) by the then Minister of Tourism and Chair of the PTA Board. In 1990, Pres. Aquino, on noting that he was not designated by herself but merely by said Minister contrary to that required by law, designated the new Sec. of Tourism respondent *Garrucho* as the GM until such time she makes an appointment thereto. Binamira now seeks reinstatement, claiming he has been removed without just cause in violation of his security of tenure.

Issue. Does Binamira have a claim on security of tenure?

Held. No. It is not disputed that Binamira was not appointed by the President but only designated by the Minister of Tourism. Where the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority. In this sense, *the designation is considered only an acting or temporary appointment, which does not confer security of tenure*. It is when an *appointment* is completed, usually with its confirmation, *that security of tenure results* for the person chosen, unless he is replaceable at pleasure because of the nature of his office.[149] Moreover, even if it is to be conceded that his designation by the Minister constituted an act of the President—as Binamira contends—such act shall be considered valid only if not "disapproved or reprobated by the President" which is what happened in the case at bar.

It is the clear and expressed intent of the framers of the Constitution that presidential appointments, except those mentioned in the first sentence of Sec 16, Art VII, are NOT subject to confirmation by the CA.

Sarmiento III v. Mison
No. L-79974, 156 SCRA 549 [Dec 17, 1987]

Facts. Petitioner *Sarmiento III* et al. seek to enjoin respondent *Mison* from performing the functions of the Office of Commissioner of the Bureau of Customs on the ground that Mison's appointment as Commissioner of said

[147] Art VIII, Sec 4(3): "x x x no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*."

[148] As a final word, the Court found "misguided and utterly unfair" the insulation that it is resolving in favor of granting Pres. GMA authority to appoint the successor of C.J. Puno because all the Members of the present Court were appointed by the her. They stated that Members of the Court vote on the sole basis of their conscience and the merits of the issues. Any claim to the contrary proceeds from malice and condescension. Neither the outgoing President nor the present Members of the Court had arranged the current situation to happen and to evolve as it has. None of the Members of the Court could have prevented the Members composing the Court when she assumed the Presidency about a decade ago from retiring during her prolonged term and tenure, for their retirements were mandatory. (*De Castro v. JBC* [Apr 20, 2010]), *supra*.)

[149] *Appointment and designation, distinguished.* – *Appointment* may be defined as the selection, by the authority vested with power, of an individual who is to exercise the functions of a given office. *Designation*, on the other hand connotes merely the imposition by law of additional duties on an incumbent official. It is said that appointment is essentially executive while designation is legislative. (*Binamira v. Garrucho, Jr.*, 188 SCRA 154)

Bureau is unconstitutional by reason of its not having been confirmed by the Commission on Appointments (CA).

Issue. Does the appointment of Mison as Commissioner of the Bureau of Customs require the confirmation of CA?

Held. No. It is the *clear and expressed intent of the framers of the 1987 Constitution that presidential appointments, except those mentioned in the first sentence (the first group[150]) of Sec 16, Art VII, are NOT subject to confirmation by the CA.* It is a rule in *statutory construction* that an express enumeration of subjects—as it is so in the first sentence of Sec 16, Art VII—excludes others *not* enumerated. Considering the *historical background* that the 1935 Constitution transformed the CA into a venue of "horse-trading" as almost all presidential appointments required the consent of the CA and that the 1973 Constitution placed the absolute power of appointment in the President with hardly any check on the part of the legislature, it can be inferred that the framers of the 1987 Constitution struck "middle ground" with requiring only the first group to be confirmed by the CA. Such is also manifest in the *deliberations of the 1986 Constitutional Commission*. In said deliberations, it was even explicit that the appointments of the heads of bureaus be excluded from the requirement of confirmation by the CA.[151]

[150] *Four groups of officers whom the President shall appoint (in Art VII, sec 16)*: (1) the heads of the exec depts., ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval capt, and other officers whose appointments are vested in him in this Constitution (transitional sectoral reps to Congress, regular members of the JBC, Chairman and Commissioners of the CSC, Chairman and Commissioners of the COMELEC, Chairman and Commissioners of the COA and Members of the regional consultative commission), (2) all other officers of the govt whose appointments are not otherwise provided for by law, (3) those whom the Pres may be authorized by law to appoint, and (4) officers lower in rank whose appointments the Congress may by law vest in the President alone (*Sarmiento III v. Mison*, 156 SCRA 553)

[151] As to the fourth group of officers whom the President can appoint, it was held that the word "alone" in the third sentence of Sec 16, Art VII appears to be redundant in the light of the second sentence. In other words, the third sentence could have merely been stated as "in the case of lower-rank officers, the Congress may by law vest their appointment in the *President*, in the courts, or in the heads of various depts…" (*Sarmiento III v. Mison*, 156 SCRA 564)

When the appointment is one that the Constitution mandates is for the President to make without the participation of the CA, the executive's voluntary act of submitting such appointment to the CA and the latter's act of confirming or rejecting the same are done without or in excess of jurisdiction.

Ad interim appointments do not apply to appointments solely for the President to make.

Appointments as Chairman and members of the CHR does NOT require confirmation by CA (falls in the "3rd group").

Bautista v. Salonga

GR 86439, 172 SCRA 160 [Apr 13, 1989]

Facts. On Dec 17, 1988, Pres. Aquino appointed *Bautista* as Chairman of the Commission of Human Rights (CHR) to which she later qualified to. On Jan 10, 1989, she (with the other appointed members of the CHR) was requested by Commission on Appointments (CA) to appear before it for deliberation on their appointments. She refused to submit averring their appointments were not subject for CA's review. On Jan 14, 1989, the Pres. apparently submitted an *ad interim* appointment of Bautista which CA disapproved in view of her refusal to submit to its jurisdiction. Pending resolution, the President designated an Acting Chairman in lieu of her. Meanwhile, Bautista filed this present petition to declare unconstitutional the actions of, among others, the CA.

Issue. Does CA have the authority to review the appointments made by the President to the CHR?

Held. No. Since the position of Chairman of the CHR is not among the positions mentioned in the first sentence of Sec 16, Art VII, it follows that such appointment is to be made without the review or participation of the CA. The President appoints the Chairman and its members of the CHR pursuant to the second sentence of said Sec for she is authorized to do so by law (EO 163). Regarding the President's submission of an "*ad interim* appointment" to CA on Jan 14, it was ruled that neither the Executive nor the Legislature can create power where the Constitution confers none. The exercise of political options that finds no support in the Constitution

cannot be sustained. Thus, when the appointment is one that the Constitution mandates is for the President to make without the participation of the CA, the executive's voluntary act of submitting such appointment to the CA and the latter's act of confirming or rejecting the same are done without or in excess of jurisdiction. Moreover, it cannot be impressed that the new or re-appointment of Bautista was an *ad interim* appointment, because *ad interim* appointments do not apply to appointments solely for the President to make. Petition granted. Bautista is declared to be, as she is, the duly appointed Chairman.

Appointment as sectoral representative (during the transition period) in the House of Reps requires confirmation by CA (falls in "other officers whose appointments are vested in the Pres. in this Constitution" of the "1st group").

Quintos Deles v. Commission on Constitutional Commissions
GR 83216, 177 SCRA 259 [Sept 4, 1989]

Facts. Pursuant to *Art VII, Sec 16* and Art XVIII, Sec 7[152] of the Constitution, petitioner *Deles* was among others who was appointed to a seat in the House of Reps reserved for the sectoral reps in Art VI, Sec 5(1)[153]. However, her (as well as the others) oath-taking was suspended as it was opposed by members of the Commission on Appointments (CA) who insisted that appointment of sectoral reps must first be confirmed by it. Deles now petitions to compel CA to allow her to office and to restrain the same from subjecting her to the confirmation process.

Issue. Is confirmation by CA required for the appointment of sectoral reps to the House of Reps?

Held. Yes. Since the seats reserved for sectoral representatives in Sec 5(2), Art VI may be filled by appointment by the Pres. by express provision of Sec 7, Art XVIII of the Constitution, it is indubitable that sectoral reps to the House of Reps are among the "other officers whose appointments are vested in him (the Pres.) in this Constitution" referred to in the first sentence of *Sec 16, Art VII* whose appointments are subject to confirmation by the CA.[154] Furthermore, Deles' appointment was *ad interim*, pursuant to Sec 16(2), Art VII. Implicit therefore is the recognition by the Pres. that Deles' appointment requires confirmation by the CA. Petition dismissed.

Appointments as Chairman and members of the NLRC does NOT require confirmation by CA (falls in the "3rd group").

Calderon v. Carale
GR 91636, 208 SCRA 254 [Apr 22, 1992]

Facts. Pursuant to RA 6715[155] which amended Art 215 of the Labor Code, Pres. Aquino appointed the Chairman and Commissioners of the National Labor Relations Commission (NLRC) representing the public workers and employers sectors. This petition questions the legality of said permanent appointments on the ground that the same were not submitted for confirmation by the Commission on Appointments (CA).

Issue. Is confirmation by CA required for the appointments of Chairman and Commissioners of the NLRC?

Held. No. Indubitably, the NLRC Chairman and Commissioners fall within the second sentence (and not the first which alone requires confirmation by CA) of *Sec 16, Art VII* of the Constitution, more specifically under the "third group" of appointees referred to in *Mison*, i.e. those whom the President

[152] Const., Art XVIII, Sec 7: Until a law is passed, the Pres. may fill by appointment from a list of nominees by the respective sectors, the seats reserved for sectoral representation in par (2), Sec 5 of Art VI of this Constitution

[153] *Id*., Art VI, Sec 5(1): The House of Reps shall be composed of xxx [those] who shall be elected from legislative districts xxx, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and *sectoral parties or organizations*

[154] Nevertheless, there are appointments vested in the President in the Constitution which, by express mandate of the Constitution, require no confirmation such as appointments of members of the SC and judges of lower courts (Sec. 9, Art. VIII) and the Ombudsman and his deputies (Sec. 9, Art. XI). But no such exemption from confirmation had been extended to appointments of sectoral representatives in the Constitution (*Quintos Deles v. Commission on Constitutional Commissions,* 177 SCRA 259)

[155] Sec 13 thereof provides: xxx the Chairman, the Division Presiding Commissioners and other Commissioners [of NLRC] shall be appointed by the Pres., subject to confirmation by the COA xxx

may be authorized by law to appoint. Furthermore, Art 215 of the Labor Code as amended by RA 6715 insofar as it requires the confirmation by CA of appointments of the Chairman and members of the NLRC is hereby declared unconstitutional for amending by legislation Art VII, Sec 16. It added appointments to those enumerated in the first sentence (of said sec 16) which require confirmation by CA and it imposed the confirmation of CA on appointments which are otherwise entrusted only with the President as set forth in the second sentence.

Congress cannot by law expand the confirmation powers of the CA and require confirmation of appointment of other government officials.

Tarrosa v. Singson
GR 111243, 232 SCRA 553 [May 25, 1994]

Facts. Petitioner seeks to enjoin respondent *Singson* from performing his functions as Governor of the Bangko Sentral ng Pilipinas (BSP) averring that his appointment has not been confirmed by Commission on Appointments (CA). Petitioner relies on RA 7653 which provides therein that the appointment of the Governor of BSP shall be subject to confirmation by CA. Respondents claim that Congress exceeded its legislative powers in requiring such confirmation.

Issue. May Congress, by legislation, require the confirmation by CA of the appointment of the BSP Governor?

Held. No. While the petition was dismissed for procedural defect[156] and so the constitutionality of RA 7653 was no longer passed upon, the Court reinforced its ruling in *Carale* that *Congress cannot by law expand the confirmation powers of the CA and require confirmation of appointment of other government officials*.

The clause "officers of the armed forces from the rank of colonel or naval captain" in Sec 16, Art VII refers to military officers alone.

[156] It was ruled the petition which is in the nature of a *quo warranto* may only be filed by the Solicitor General or by a person claiming to be entitled to a public office unlawfully held or exercised by another

Soriano v. Lista
GR 153881 [Mar 24, 2003]

Facts. Respondents *Lista et al.* were appointed by Pres. GMA to different positions in the Philippine Coast Guard (PCG). This petition questions the constitutionality of the permanent appointments on the ground that they did not undergo the confirmation process in the Commission on Appointments (CA).

The PCG used to be integrated in the AFP as a major subordinate unit of the Philippine Navy. Now, by EO 475, it is placed under the DOTC.

Issue. Is confirmation by CA required for the appointments in the PCG?

Held. No. The clause "*officers of the armed forces* from the rank of colonel or naval captain" in Sec 16, Art VII of the Constitution refers to *military officers* alone. Now that the PCG is under the DOTC and no longer part of the Philippine Navy or the AFP, the promotions and appointments of Lista et al. in the PCG, or of any PCG officer from the rank of captain and higher for that matter, do not require confirmation by the CA.

The President may make appointments of department secretaries in an acting capacity without the consent of the CA even while Congress is in session.

Pimentel v. Ermita
GR 164978 [Oct 13, 2005]

Facts. Pres. GMA issued *temporary* appointments to respondents *as acting secretaries* of their respective departments. After Congress adjourned, Pres. GMA issued *ad interim* appointments to respondents as secretaries of the departments to which they were previously appointed in an acting capacity. Petitioners Senators question the constitutionality of the appointments of respondents as acting secretaries for not having been submitted to the Commission on Appointments (CA) for confirmation while Congress was in session.

Petitioners further argue that under Sec 10, EO 292 (the Administrative Code of 1987), "in case of a vacancy in the Office of a Secretary, it is only an Undersecretary who can be designated as Acting Secretary." Respondents were not undersecretaries prior to the issuance of their temporary appointments.

Issue. May the President make appointments of department secretaries in an acting capacity without the consent of the CA while Congress is in session?

Held. Yes. *Acting appointments are not required to be submitted to the CA, and they may be extended any time there is a vacancy, whether Congress is in session or in recess*.[157]

Congress cannot appoint a person to an office in the guise of prescribing qualifications to that office. Neither may Congress impose on the President the duty to appoint any particular person to an office.[158] Thus, Congress, through a law, cannot impose on the President the obligation to appoint automatically the undersecretary as her temporary alter ego.[159]

[157] *Ad interim appointments and appointments in an acting capacity, distinguished*. – Both of them are effective upon acceptance. However, *ad interim* appointments are extended only during a recess of Congress; acting appointments may be extended any time there is a vacancy. *Ad interim* appointments are submitted to the CA for confirmation; acting appointments are not submitted to the CA. (*Pimentel v. Ermita*, GR 164978 [2005])

[158] *The nature of the power of the President to appoint*. "The power to appoint is essentially executive in nature, and the legislature may not interfere with [its] exercise x x x except in those instances when the Constitution expressly allows x x x. Limitations on the executive power to appoint are construed strictly against the legislature. The scope of the legislature's interference in the executive's power to appoint is limited to the power to prescribe the qualifications to an appointive office. x x x"

The nature of the Commission on Appointments. "The Commission on Appointments is a creature of the Constitution. Although its membership is confined to members of Congress, [it] is independent of Congress. [Its] powers x x x do not come from Congress, but emanate directly from the Constitution. Hence, it is not an agent of Congress. In fact, [its] functions x x x are purely executive in nature." (*Ibid.*)

[159] As for the petitioners' apprehension that appointments made in an acting capacity is susceptible to abuse, the Court answered that EO 292 provides that acting appointments cannot exceed one (1) year. This was incorporated in EO 292 as a "safeguard to prevent abuses, like the use of acting appointments as a way to circumvent confirmation by the [CA]." (*Id*.)

Appointment to office is intrinsically an executive act, and the power to appoint is, in essence, discretionary. Hence, without the element of choice, the supposed power of appointment is no power at all.

Flores v. Drilon

GR 104732, 223 SCRA 568 [Jun 22, 1993]

Facts. This petition challenges the constitutionality of Sec 13, par (d) of RA 7227 (Bases Conversion and Development Act of 1992) under which incumbent Olongapo City Mayor Gordon was appointed Chairman and CEO of the Subic Bay Metropolitan Authority (SBMA). Said par (d) carries the proviso that "for the first year of its operations from the effectivity of this Act, the mayor of the City of Olongapo shall be appointed as the chairman and CEO of the Subic Authority." Petitioners argue on the ground, among others, that said proviso infringes *Sec 16, Art VII* of the Constitution since it was Congress through the proviso (and not the President) who appointed the Mayor to the subject posts.

Issue. Did Congress, through the subject proviso, encroach on the prerogative of the President in making appointments?

Held. Yes. *Appointment to office is intrinsically an executive act; and the power to appoint is, in essence, discretionary*. Thus, the power of choice is the heart of the power to appoint. Hence, when Congress clothes the President with the power to appoint an officer, it cannot at the same time limit the choice of the Pres. to only one candidate. Even on the pretext of prescribing the qualifications of the officer, Congress may not abuse such power as to divest the appointing authority of his discretion to pick his own choice—as when the qualifications prescribed can only be met by one individual. In this case, the subject proviso in effect limited the appointing authority to only one eligible option: the incumbent Mayor of Olongapo City. *Such supposed power of appointment, without the element of choice, is no power at all and goes against the very nature of the appointment itself*. Hence, the subject proviso is unconstitutional and the appointment of Mayor Gordon pursuant thereto is invalid and void.

An ad interim appointment is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President. "Ad interim" means "in the meantime" that Congress is in recess.

Matibag v. Benipayo
GR 149036 [Apr 2, 2002]

Facts. Pres. GMA appointed, *ad interim*, respondent *Benipayo* as COMELEC Chairman and respondents Borra and Tuason as COMELEC Commissioners. Respondents' *ad interim* appointments were submitted for confirmation to the Commission on Appointments (CA) but was by-passed; Pres. GMA then renewed their *ad interim* appointments.

Meanwhile, Benipayo, in his capacity as Chairman, reassigned petitioner *Matibag* to the Law Dept. Matibag was hitherto the Acting Director IV of COMELEC's Education and Information Dept. Matibag objected to the reassignment, and filed this instant petition questioning the constitutionality of respondents' *ad interim* appointments. Matibag argues that an *ad interim* appointment to the COMELEC is a temporary appointment that is prohibited by Sec 1(2), Art IX-C of the Constitution.[160] The rationale behind Matibag's theory is that only an appointee who is confirmed by the CA can guarantee the independence of the COMELEC.

Issue. Are *ad interim* appointments temporary appointments?

Held. No. *An ad interim appointment is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office.* "*Ad interim* appointment" *means* a permanent appointment made by the President *in the meantime that Congress is in recess.* It does not mean a temporary appointment that can be withdrawn or revoked at any time.[161]

The fact that *ad interim* appointments are subject to confirmation by the CA does not alter their permanent character. [The requirement of the CA's confirmation is merely an imposition of a resolutory condition on *ad interim* appointments.][162] The Constitution itself, under Sec 16, Art VII, makes an *ad interim* appointment permanent in character by making it effective until disapproved by the CA or until the next adjournment of Congress.[163]

To hold that the independence of the COMELEC requires the CA to first confirm *ad interim* appointees before the appointees can assume office will negate the President's power to make *ad interim* appointments.[164]

The choice of the appointee is a political question which only the appointing authority can decide. It is NOT reversible by the Civil Service Commission.

Luego v. Civil Service Commission
No. L-69137, 143 SCRA 327 [Aug 5, 1986]

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[160] Sec 1(2), Art IX-C: "x x x In no case shall any Member [of COMELEC] be appointed or designated in a temporary or acting capacity."

The foregoing sentence also appears in Art IX-B and Art IX-D providing for the creation of the CSC and the COA, respectively.

[161] *Ad interim appointments and appointments in an acting capacity, distinguished.* – An *ad interim* appointment is permanent and irrevocable except as provided by law; an appointment or designation in a temporary or acting capacity can be withdrawn or revoked at the pleasure of the appointing power. An *ad interim* appointee enjoys security of tenure; a temporary or acting appointee does not. The latter is the kind of appointment that the Constitution prohibits the President from making to the three independent constitutional commissions, including the COMELEC. (*Matibag v. Benipayo*, GR 149036 [2002])

[162] *An ad interim appointment can be terminated for two causes specified in the Constitution*:
(1) the disapproval by the CA; and
(2) the adjournment of Congress without the CA acting on the appointment.

These two causes are resolutory conditions expressly imposed by the Constitution on all *ad interim* appointments. (*Ibid.*)

[163] *Appointments requiring confirmation by the CA while Congress is in session and while in recess, distinguished*. – In the former, the President nominates, and only upon the consent of the CA may the person thus named assume office; *ad interim* appointments take effect the moment the appointee qualifies into office. His title to such office is complete. (*Id.*)

[164] *Purpose of the power of the President to issue ad interim appointments.* – to avoid interruptions in vital government services that otherwise would result from prolonged vacancies in government offices, including the three constitutional commissions. (*Id.*)

Facts. Petitioner *Luego* was appointed Administrative Officer II in the Office of the City Mayor in Cebu City by the then Mayor. The appointment was described as "permanent" but the respondent *Civil Service Commission* (CSC) stamped and approved it as "temporary" as it was contested by the private respondent although the CSC itself admitted Luego had satisfied all legal requirements. After hearings, the CSC found the private respondent better qualified and directed him to be appointed in place of Luego. Luego argues his earlier appointment is permanent.

Issue. Is the Civil Service Commission authorized to disapprove a permanent appointment and order a replacement thereto?

Held. No. It was not for the CSC to reverse and call an appointment temporary when it has been rightfully indicated by the appointing authority as permanent. Neither can it order a replacement on ground that the other is better "qualified." Being permanent, Luego's appointment is protected by the Constitution. Unlike the Commission on Appointments which, by the mandate of the Constitution, could review the wisdom of the appointment, the CSC is constrained to the non-discretionary authority of determining whether or not the appointee meets all the required conditions laid down by the law. Thus, when the appointee is qualified and all the other legal requirements are satisfied, the CSC has no choice but to attest to the appointment in accordance with the Civil Service Laws. *The appointment which has satisfied all legal requirements cannot be faulted on the ground that there are others better qualified who should have been preferred for that is a political question which only the appointing authority can decide*. Luego is declared entitled to the office in dispute by virtue of his permanent appointment.

"Succession-by-operation-of-law" theory deprives the President of his power to appoint and is thus unconstitutional.

Pobre v. Mendieta
GR 106696, 224 SCRA 738 [Jul 23, 1993]

Facts. When the term of the Professional Regulation Commission (PRC) Chairman expired, petitioner Assoc. Commissioner *Pobre* was appointed to succeed. Meanwhile, respondent Senior Assoc. Commissioner *Mendieta* contested Pobre's appointment in court averring that he is legally entitled to succeed in office relying on PD 223 which provided the complicatedly worded clause "xxx any vacancy in the [PRC] shall be filled for the unexpired term only with the most senior of the Associate Commissioners succeeding the Commissioner at the expiration of his term, resignation or removal. xxx." The lower court held for Mendieta, construing the above-quoted portion of PD 223 to mean a "succession clause" which thereby, in its opinion, gives Mendieta the valid claim.

Issue. May one succeed the PRC Chairman whose term has expired by operation of law under PD 223?

Held. No. *Sec 16, Art VII* of the Constitution empowers the President to appoint "those whom he may be authorized by law to appoint." In this case, the authorizing law is PD 223. The Court holds, contrary to the decision of the lower court, that the succession clause operates only when there is an "unexpired term" of the Chairman to be served. Otherwise, if the Chairman's term had expired or been fully served, the vacancy must be filled by appointment of a new Chairman by the President. The "*succession-by-operation-of-law" theory is unacceptable for that would deprive the President of his power to appoint* a new PRC Commissioner and Associate Commissioners under PD 223.[165] Pobre's appointment, not having been found repugnant to PD 223, is thus valid.

THE CONTROL POWER
Art VII, Sec 17.

An officer in control lays down the rules in the doing of an act. A supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them.

Drilon v. Lim
GR 112497, 235 SCRA 135 [Aug 4, 1994]

[165] It was also held that the preposition "at" in the above-quoted "*at* the expiration of his term, resignation or removal" should be understood as and thus substituted as "until" to avoid an absurdity or contradiction. (*Pobre v. Mendieta*, 224 SCRA 738)

Facts. Pursuant to Sec 187 of the Local Govt Code (LGC), Sec. of Justice *Drilon,* on appeal to him, declared the Manila Revenue Code null and void for non-compliance with the prescribed procedure in the enactment of tax ordinances and for containing certain provisions contrary to law and public policy. Said provision of the LGC states "that any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal xxx to the Sec. of Justice xxx." The City of Manila filed a petition in the lower court which ruled in their favor. The lower court concluded that said Sec 187 was unconstitutional in that it, among others, gave to the Secretary of Justice the power of control (vested by the Constitution in the President) and not of supervision only.

Issue. Does the questioned provision give the Sec. of Justice the power of control and not merely of supervision?

Held. No. Sec 187 only authorizes the Sec. of Justice to review only the constitutionality or legality of the tax ordinance and, if warranted, to revoke it on either or both of these grounds. An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. Sec. Drilon did precisely this, and no more nor less than this, and so performed an act not of control but of mere supervision. Sec 187 is valid as it is constitutional.

Doctrine of Qualified Political Agency — The acts of the department secretaries, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the President, presumptively the acts of the President.

Villena v. Secretary of the Interior
No. 46570, 67 Phil 451 [Apr 21, 1939]

Facts. Mayor *VIllena* was under investigation for several crimes involving moral turpitude when the *Sec. of the Interior* decreed his suspension to prevent possible coercion of witnesses. Villena now seeks to prohibit the Secretary and have the latter declared without authority to suspend him.

Issue. Does the Sec. of the Interior have the authority to decree the suspension of Mayor Villena?

Held. Yes. There is no clear and express grant of power to the Sec. of the Interior to suspend a Municipality Mayor who is under investigation. However, that power is expressly lodged the President under the Administrative Code, and, under the presidential type of govt which we have adopted and considering the departmental organization established, the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive, for the functions of the Chief Exec are performed by and through the executive departments.[166] The heads of the various departments, their personality is in reality but the projection of that of the President; and each of them is, and must be, the President's *alter ego* in the matters of that department where the Pres. is required by law to exercise authority. Hence, the suspension decreed by the Secretary is deemed decreed by the President himself who has expressed authority to do such. Petition dismissed.

Implicit from the President's control of all executive departments is his authority to go over, confirm, modify or reverse the action taken by his department secretaries.

Lacson-Magallanes Co., Inc. v. Paño
No. L-27811, 21 SCRA 895 [Nov 17, 1967]

Facts. In a conflict between *Magallanes Co.* and *Paño* et al. involving agricultural land, the Director of Lands rendered a decision in favor of the former. Paño et al. appealed with the Secretary of Agriculture and Natural Resources but it was dismissed, and the previous decision was affirmed. The case was elevated to the President. The Executive Secretary "by

[166] except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally (*Villena v. Secretary of the Interior*, 67 Phil 463)

authority of the President" decided the controversy and modified the decision, directing the disputed land to be allocated among Paño et al. Magallanes Co. now appeals to this Court.

Issue. May the Executive Secretary, acting by the authority of the President, reverse a decision of the Director of Lands that had been affirmed by the Sec. of Agriculture and Natural Resources?

Held. Yes. Under the Constitution, the President has control of all executive departments. He controls and directs the acts of his department heads who are men of his confidence. Implicit then is his authority to go over, confirm, modify or reverse the action taken by his department secretaries. It may not, therefore, be said that the President cannot rule on the correctness of a decision of a department secretary. It is not correct to say that the President may not delegate to his Exec. Sec. certain acts[167] for he is not expected to perform in person all the multifarious executive and administrative functions. The rule is where the Exec. Sec. acts "by authority of the Pres.", his decision is that of the President, and only the President may rightfully disapprove or reprobate it and say that the Exec. Sec. is not authorized to do so.

Since the President has control over all executive depts., he also has the authority vested by law to his subordinates.

City of Iligan v. Director of Lands

No. L-30852, 158 SCRA 158 [Feb 26, 1988]

Facts. Certain parcels of public land were up for auction sale when then Pres. Macapagal, pursuant to the Public Land Act, issued Proc. No. 469 which donated and transferred some of it in favor of *Iligan City*. Iligan City accordingly requested the *Director of Lands* to exclude said donated parcels from the auction sale but no action was taken. Iligan City prayed to stop the auction sale in court and was granted a preliminary injunction. Meanwhile, the new President, Marcos, issued Proc. No. 94 which declared the disputed parcels open to disposition apparently also pursuant to the Public Land Act. In the trial, decision was rendered against Iligan City, hence this appeal. Iligan City contends that the trial court erred in holding that Proc. No. 469 did not confer title to them because the President does not have such authority as it was not sanctioned at all by the Public Land Act. Sec 60 of the Public Land Act provides such lands may be leased, sold, donated or granted by the Sec. of Agriculture and Natural Resources thru the Dir. of Lands.

Issue. May the President make donations or transfers of land to a province, municipality or subdivision of the govt instead of the Dir. of Lands and or the Sec. of Agri. and Nat. Resources as provided by the Public Land Act?

Held. Yes. Since it is the Director of Lands who has direct executive control xxx in the lease, sale or any form of concession or disposition of the land of the public domain subject to the immediate control of the Sec. of Agri. and Nat. Resources, and considering that under the Constitution the Pres. has control over all executive depts, bureaus, and offices, etc., the Pres. has therefore the same authority to dispose of portions of the public domain as his subordinates—the Director of Lands, and his *alter ego* the Secretary of Agriculture and Natural Resources.

Gascon v. Arroyo

GR 78389, 178 SCRA 582 [Oct 16, 1989]

Facts. After the EDSA Revolution, TV station Channel 4, which the Lopez family lost during martial law, was sequestered by the Presidential Commission on Good Government (PCGG). Requesting its return from Pres. Aquino, the Lopez family's ABS-CBN Broadcasting Corp. entered into an "Agreement to Arbitrate" with Exec. Sec. *Arroyo* who was acting by the authority of the President. Petitioners as taxpayers filed this instant petition, seeking to annul the said Agreement.

Issue. Does the Executive Secretary have the authority to enter into the subject Agreement?

Held. Yes. It was ruled petitioners have no legal standing but the Court nonetheless elaborated on this case's lack of merit. [As previously held in *Villena v. Secretary of the Interior* (1939)] Cabinet members are the assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person, or where the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments,

[167] Only those acts which the Constitution does not command that the President perform in person

and the acts of the heads of such departments, performed in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. Exec. Sec. Arroyo had, therefore, the power and authority to enter into said Agreement with ABS-CBN, as he acted for and in behalf of the President when he signed it.

Kilusang Bayan[168] v. Dominguez
GR 85439, 205 SCRA 92 [Jan 13, 1992]

Facts. Petitioner *KBMBPM*, a cooperative, entered into a contract with the Municipality of Muntinlupa thru its then Mayor Carlos, Jr. whereby the formers shall manage and operate the new Muntinlupa public market. When the new Mayor Bunye (respondent) assumed office, he abrogated the contract and declared that the Municipality was taking over the management. With the officers of KBMBPM resisting take-over, Bunye et al. allegedly used arms and violence purportedly to serve an Order from the Sec. of Agriculture (respondent *Dominguez*) which, in sum, directed a management take-over, disbanding the board of directors. A "legal fencing" ensued. Eventually, the case was filed against Bunye, Dominguez et al. with the Sandiganbayan. Sec. Dominguez contends he was acting under Sec 8 of PD 175 which grants him authority to supervise and regulate all cooperatives.

Under LOI 23,[169] which implements PD 175, "an elected officer, director or committee member [of cooperatives] may be removed by a vote of majority of the members entitled to vote at an annual or special general assembly."

Issue. Is the Order issued by Sec. Dominguez valid?

Held. No. It is clear from LOI 23 that there is a procedure to be followed in the removal of directors or officers of the KBMBPM which was not followed, and Sec. Dominguez arrogated unto himself the power of the members of the KBMBPM who are authorized to vote to remove the petitioning directors and officers. Sec 8 of PD 175 does not give him that right. An administrative officer has only such powers as are expressly granted to him and those necessarily implied in the exercise thereof. These powers should not be extended by implication beyond what may to necessary for their just and reasonable execution.[170]

The President's power of control may extend to the power to investigate, suspend or remove officers and employees in the executive department if they are presidential appointees, but NOT to those in the classified service. It merely applies over the acts of the subordinate and not over the actor himself – limitation of President's power of control.

Ang-Angco v. Castillo
No. L-17169, 9 SCRA 619 [Nov 30, 1963]

Facts. Petitioner *Ang-Angco* was a Collector of Customs who authorized the release of certain commodities from the customs house without the necessary release certificate from the Central Bank. He was charged with an administrative case which remained pending for 3 years until respondent Exec. Sec *Castillo*, by authority of the President, rendered a decision, found him guilty and considered him resigned from the date of notice. He contested the decision, exhausted all administrative remedies but was unsuccessful hence this petition. He invokes the Civil Service Act of 1959 and the now Art IX-B, Sec 2(3).[171] The said Act vests in the

[168] Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihang Bayan ng Muntinlupa, Inc.
[169] Letter of Implementation No. 23

[170] *Administrative supervision* is limited to the authority of the department to:
(1) *generally oversee the operations of such agencies* and insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities;
(2) require the submission of reports and cause the conduct of management audit, *performance evaluation* and inspection *to determine compliance with policies*, standards and guidelines of the department;
(3) *take such action as may be necessary for the proper performance of official functions*, including rectification of violations, abuses and other forms of mal-administration; and
(4) review and pass upon budget proposals of such agencies but may not increase or add to them (*Kilusang Bayan v. Dominguez*, 205 SCRA 92)

[171] Art IX-B, Sec 2(3): No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

Commissioner of Civil Service the original and exclusive jurisdiction to decide administrative cases against officers and employees in the classified service. It also provides of a right to appeal and to due process, which Ang-Angco alleges he has been deprived of.

Issue. May the Executive Secretary, by the authority of the President, take direct action on the administrative case of a member of the classified service?

Held. No. In harmonizing the now *Art VII, Sec 17* and Art IX-B, Sec 2(3), the Court ruled that the power of control of the President may extend to the power to investigate, suspend or remove officers and employees who belong to the executive department *if they are presidential appointees* xxx, but *not* with regard to those officers and employees who belong to the classified service. This is in line with the provision of our Constitution: "the Congress may by law vest the appointment of the inferior officers, in the President alone, in the courts, or in heads of department" [now Art VII, Sec 16]. With regard to these officers whose appointments are vested on heads of departments, Congress has provided by law—in this case, the Civil Service Act of 1959—for a procedure for their removal precisely in view of this constitutional authority.[172] Thus, the step taken by Exec. Sec. Castillo, even with the authority of the President, in taking direct action on the administrative case Ang-Angco, without submitting the same to the Commissioner of Civil Service, is contrary to law and should be set aside.

Govt-controlled owned or controlled corps. partake of the nature of govt bureaus or offices, and therefore are also under the President's power of control.

National Marketing Corp. v. Arca
No. L-25743, 29 SCRA 648 [Sept 30, 1969]

Facts. *NAMARCO* Manager Arive and was found administratively liable by NAMARCO's General Manager (GM) and Board of Directors and was dismissed by them. Arive appealed to the President who, through his Executive Secretary, set aside the decision of NAMARCO and reinstated him. However, NAMARCO took no action insisting the President has no jurisdiction over the matter. Arive filed a complaint with the CFI which ruled in his favor. NAMARCO contends that the President's constitutional power of control over the executive xxx offices (now in *Art VII, Sec 17*) does not include govt-owned or controlled corporations such as NAMARCO and that their decision regarding Arive is not appealable to the President since its Charter and the Uniform Charter for Govt-owned or controlled corps. do not provide for an appeal.

Under EO 386, govt-controlled owned or controlled corps are administratively supervised by the Administrator of the Office of Economic Coordination, "whose compensation and rank, shall be that of a head of an Executive Department" and who "shall be responsible to the President of the Philippines under whose control his functions… shall be exercised."

Issue. Does the President have the authority to reverse the decision (to dismiss a Manager) of the Board of Directors of a govt-owned/controlled corp. such as NAMARCO?

Held. Yes. We hold that the President's act falls within his constitutional control power over all executive depts, bureaus and offices. [EO 386 shows that] in our set-up, govt-controlled owned or controlled corps. partake of the nature of govt bureaus or offices. The fact that the said Charters do not provide for an appeal from the GM's decision of removal to any superior officer xxx does not mean that no appeal lies xxx with the President. The right to appeal to the President reposes upon the President's power of control over the executive departments.

THE MILITARY POWER
Art VII, Sec 18.

The President may NOT order police actions violative of human rights under the pretext of Art VII, Sec 18 .

Guanzon v. De Villa

[172] The Court also held: the *power of control* given to the President by the Constitution *merely applies to the exercise of control over the acts of the subordinate* and *not over the actor or agent himself* of the act. It only means that the President may set aside the judgment or action taken by a subordinate in the performance of his duties. (*Ang-Angco v. Castillo*, 9 SCRA 629)

GR 80508, 181 SCRA 623 [Jan 30, 1990]

Facts. The 41 petitioners are suing as taxpayers and concerned citizens. Petitioners allege that in 1987, Metro Manila, 12 "saturation drives" or "areal target zonings" were concertedly conducted by the military and police represented here by respondents Maj. Gen. *de Villa* et al. in a manner flagrantly violative of express guarantees of the Bill of Rights such as freedom from illegal searches and seizures.[173] De Villa et al. allege that the accusations about the deliberate disregard of human rights are total lies. They cite *Art VII*, sec 17 and *18*[174] as legal bases for the drives. Petitioners seek to prohibit the respondents from further conducting these drives.

Issue. May the police conduct such drives in violation of human rights under the pretext of *Art VII, sec 18* ("xxx preventing or suppressing lawless violence, invasion or rebellion xxx")?

Held. No. If the military and the police must conduct concerted campaigns to flush out and catch criminal elements, such drives must be consistent with the constitutional and statutory rights of all the people affected by such actions. There is, of course, nothing in the Constitution which denies the authority of the Chief Executive to order police actions to stop unabated criminality, rising lawlessness, and alarming communist activities. However, all police actions are governed by the limitations of the Bill of Rights.[175]

Courts martial are simply instrumentalities of the executive power provided by Congress for the President as Commander-in-Chief. Their only object: to aid the President in commanding and enforcing discipline in the Armed Forces.

[173] Some allegations include that the police/military destroyed civilian homes, forced the inhabitants to be herded like cows and ordered them to strip down to their briefs in search for tattoo marks or other imagined marks

[174] Referring to part of par 1: "xxx The President xxx whenever it becomes necessary, xxx may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. xxx"

[175] Petition was however dismissed for lack of proper parties, lack of proof and was remanded to the RTC

Ruffy v. Chief of Staff

No. L-533, 75 Phil 875 [Aug 20, 1946]

Facts. Lt. Col. Jurado was Commanding Officer of the Bolo Combat Team in Mindoro when he was murdered. Maj. *Ruffy* et al. were charged therefor before the General Court Martial. Having resulted in the conviction of 4 of them, they now pray to prohibit the *Chief of Staff* and the Gen. Court Martial from further proceeding. They aver, among others, that the 93rd Article of War, which states that "any person subject to military law who commits murder in time of war shall suffer death or imprisonment for life, as the court martial may direct," contravenes Art VIII, sec 2(4) of the 1935 Constitution[176] in that it provides no review to be made by the SC.

Issue. Is the 93rd Article of War unconstitutional?

Held. No. The petitioner's error arose from failure to perceive the nature of courts martial and the sources of the authority for their creation. Courts martial are agencies of executive character. Unlike courts of law, they are not a portion of the judiciary. And they may be convened by the President as Commander-in-Chief independently of legislation. *They are, in fact, simply instrumentalities of the executive power provided by Congress for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing discipline therein*. In the British law: "xxx the only legitimate object of military tribunals is to aid the Crown to maintain the discipline and government of the Army." Petition dismissed.

Military commissions or tribunals have no jurisdiction to try civilians for alleged offenses when the civil courts are open and functioning.

Olaguer v. Military Commission No. 34

No. L-54558, 150 SCRA 144 [May 22, 1987]

Facts. *Olaguer* et al., civilians, were arrested by military authorities and were charged with subversion and, later, with conspiracy to assassinate Pres.

[176] Now modified in Art VIII, Sec 5(2)(d): The Supreme Court shall have the xxx [power to] review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in xxx all criminal cases in which the penalty imposed is *reclusion perpetua* or higher

Marcos and the First Lady, among others. Respondent *Military Commission No. 34* was created to try their criminal case. Olaguer et al. went to this Court, but their trial nonetheless proceeded and eventually they were convicted with the penalty of death by electrocution. They now seek to enjoin the respondents from implementing the Commission's judgment for the reason that the same is null and void. They contend that Military Commissions do not have jurisdiction to try civilians for offenses allegedly committed during martial law when civil courts are open and functioning.

Issue. Do Military Commissions have jurisdiction to try civilians for offenses allegedly committed during martial law when civil courts are open and functioning?

Held. No. To have it otherwise would be a violation of the constitutional right to due process of the civilian concerned. Due process of law demands that in all criminal prosecutions, the accused shall be entitled to a trial. The *trial contemplated by the due process clause of the Constitution is a trial by judicial process, not by executive or military process.* Military commissions are not courts within the Philippine judicial system. Under the principle of separation of powers, judicial power is not, and cannot, be the function of the Executive Department through the military authorities. *Whether or not martial law has been proclaimed throughout the country or over a part thereof is of no moment.* The imprimatur for this observation is found in *Art VII, Sec 18* of the Constitution.[177] The creation of Military Commission No. 34 to try civilians is declared unconstitutional and all its proceedings null and void.

Criminal cases involving PNP members shall be within the exclusive jurisdiction of the regular courts (as the character of the PNP is civilian)

Quiloña v. General Court Martial

GR 96607, 206 SCRA 821 [Mar 4, 1992]

Facts. Policeman *Quiloña* of the WPD was charged before the respondent *General Court Martial* with murder on 2 counts. At the scheduled arraignment on 15 Dec 1990, he manifested his desire not to be arraigned and his desire to be tried by a civilian court pursuant to the PNP Law[178] which at that time has just been approved by the President (on 13 Dec 1990). Arraignment was rescheduled on Dec 28. Quiloña moved to inhibit the Court Martial from proceeding and to have his case tried by a civilian court. Said motion was set for oral argument on 3 Jan 1991 but the Court Martial had it argued on the same day. And after a ten-minute closed-door deliberation, it resumed session and denied the motion. Notwithstanding Quiloña's refusal to enter a plea, the Court Martial entered for him a "Plea of Not Guilty" and set the trial on 25 Jan 1991. He now comes to this Court seeking to restrain the Court Martial.

Issue. Should the criminal case of Quiloña, a member of the PNP, be tried in a civilian court?

Held. Yes. Although the PNP Law was not yet in effect when Quiloña was arraigned, nevertheless, the Court Martial knew or should have known it had already been approved by the President, that it was already published and that it would take effect on 1 Jan 1991. It is precisely for this reason that the Court Martial decided to have the Quiloña's Motion to Inhibit argued on 28 Dec 1990 and thereafter arraigned him on the same day despite his vehement refusal to enter a plea. Clearly, under the circumstances obtaining, the Court Martial acted with grave abuse of discretion amounting to lack or excess of jurisdiction in proceeding with the arraignment. Moreover, the civilian character with which the PNP is expressly invested is declared by the PNP Law as paramount, and thus it mandates the transfer of criminal cases against its members to civilian courts.

[177] Referring to par 4: "A state of *martial law* does *not* suspend the operation of the Constitution, *nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function*, nor automatically suspend the privilege of the writ."

[178] (RA 6975) Sec 46 thereof: xxx criminal cases involving PNP members shall be within the exclusive jurisdiction of the regular courts: *Provided*, That the courts-martial appointed xxx shall continue to try PC-INP members who have already been arraigned xxx : *Provided*, further, that *criminal cases against PC-INP members who may have not yet been arraigned upon the effectivity of this Act shall be transferred to the proper city or provincial prosecutor or municipal trial court judge*.

The President as Commander-in-Chief may prevent a member of the AFP from appearing in legislative inquiries; however, Congress may seek recourse with the SC.

Gudani v. Senga
GR 170165, 498 SCRA 670 [Aug 15, 2006]
See under *Article VI. LEGISLATIVE DEPARTMENT,* p. 74

An actual invasion or rebellion is not required in the exercise of the calling out power. The only criterion is: "whenever it becomes necessary x x x to prevent or suppress lawless violence, invasion or rebellion."

SANLAKAS v. Reyes
GR 159085 [Feb 3, 2004]

Facts. In the wake of the so-called "Oakwood Mutiny,"[179] Pres. GMA issued Proc. No. 427 and Gen. Order No. 4, both declaring a state of rebellion and calling out the Armed Forces to suppress the rebellion. By the end of the same day the Mutiny commenced, the Oakwood occupation had ended; but it was not until 5 days after that Pres. GMA lifted the declaration of a state of rebellion.

Fearing that the declaration of a state of rebellion would open the door to violation of constitutional rights of civilians, such as warrantless arrests for the crime of rebellion, petitioners argue: Sec 18, Art VII of the Constitution does not require the declaration of a state of rebellion to call out the armed forces. The proclamation is thus unwarranted. It is an abusive exercise of a martial law power in circumvention of the report requirement[180] or an exercise of emergency powers for which Congress has not made any delegation pursuant to Sec 23(2), Art VI.

Issues.

(1) Is the declaration of a state of rebellion necessary for the exercise of the calling out power of the President?
(2) Does the mere the declaration of a state of rebellion diminish or violate constitutionally protected rights?
(3) Does the declaration of a state of rebellion amount to a declaration of martial law?
(4) Is the declaration of a state of rebellion an exercise of emergency powers?

Held. The Court ruled that the petitions have been rendered moot by the lifting of the declaration. However, it decided this case holding, "courts will decide a question, otherwise moot, if it is capable of repetition yet evading review."[181]

(1) No. *An actual invasion or rebellion is not required in the exercise of the calling out power. The only criterion provided by Sec 18 is: "whenever it becomes necessary x x x to prevent or suppress lawless violence, invasion or rebellion."*[182] The declaration of a state of rebellion in this case is thus an utter superfluity, devoid of any legal significance. Nevertheless, the President is not prohibited under Sec 18 from doing so. The Constitution vests the President not only with commander-in-Chief powers but also with executive powers. In declaring a state of

[179] Refers to the incident when, in the wee hours of 27 July 2003, some 300 junior officers and enlisted men of the AFP stormed into the Oakwood Premiere apartments in Makati City armed with high-powered ammunitions and explosives. Bewailing the corruption in the AFP, the soldiers demanded, among other things, the resignation of the President, the Secretary of Defense and the PNP Chief.

[180] Refers to the directive under Sec 18, Art VII to the President to submit a report to Congress within 48 hours from the proclamation of martial law.

[181] The Court noted that Pres. GMA has once before (at the height of the "EDSA III" demonstrations) declared a state of rebellion and called upon the AFP and PNP to suppress the same only to lift the declaration 5 days later, rendering the petitions filed then moot as well. It seems Pres. GMA's basis for the declaration then was that "an angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons" assaulted and attempted to break into Malacañang.

[182] Sec 18, Art VII grants the President, as Commander-in-Chief, a sequence of graduated power. From the most to the least benign, these are: (1) the calling out power; (2) the power to suspend the privilege of the writ of *habeas corpus*; and (3) the power to declare martial law.

In the exercise of powers (2) and (3), the Constitution requires the concurrence of two conditions: (i) an actual invasion or rebellion, and (ii) that public safety requires the exercise of such power. However, these conditions are not required in the exercise of the calling out power. The only criterion is that "whenever it becomes necessary," the President may call the armed forces "to prevent or suppress lawless violence, invasion or rebellion." (*SANLAKAS v. Reyes*, GR 159085 [2004])

rebellion, Pres. GMA was merely exercising a wedding of her Chief Executive and Commander-in-Chief powers.

(2) No. If a state of martial law does not suspend the operation of the Constitution or automatically suspend the privilege of the writ of habeas corpus (Art VII, Sec 18 par 5), then it is with more reason that a simple declaration of a state of rebellion could not bring about these conditions.

(3) No. This argument is a leap of logic for there is no illustration that Pres. GMA has attempted to exercise or has exercised martial law powers. There is no indication that military tribunals have replaced civil courts or that military authorities have taken over the functions of civil government. There is no allegation of curtailment of civil or political rights. There is no indication that the President has exercised judicial and legislative powers.

(4) No. Petitions do not cite a specific instance where Pres. GMA has attempted to or has exercised powers beyond her powers as Chief Executive or as Commander-in-Chief. The declaration of a state of rebellion and the calling out the armed forces are exercises of purely executive powers, vested on the President by Secs 1 and 18, Art VII, as opposed to the delegated legislative powers contemplated by Sec 23 (2), Art VI.

THE PARDONING POWER
Art VII, Sec 19.

Conviction by final judgment is not necessary to recommit a conditional pardonee alleged to have breached his condition. Due process of law would NOT be violated.

Torres v. Gonzales
No. L-76872, 152 SCRA 272 [Jul 23, 1987]

Facts. Convict *Torres* was granted a conditional pardon. The condition was that he would "not again violate any of the penal laws of the Philippines." About 7 years thereafter, his pardon was cancelled upon recommendation of the Board of Pardons and Parole which had records showing he was charged of a wide assortment of crimes; however, he has not been convicted by final judgment of any. He was accordingly arrested and recommitted. He now claims he did not violate his conditional pardon since he has not been convicted by final judgment and so he also avers he has been deprived of due process of law.

Sec 64(i) of the Revised Administrative Code (RAC) provides: "[The President has power] xxx to authorize the arrest and recommitment of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole or suspension of sentence."

Art 159 of the RPC imposes the penalty of *prision correccional* upon a convict who "having been granted conditional pardon by the [President], shall violate any of the conditions of such pardon"

Issue. In recommitting a conditional pardonee without having been convicted by final judgment, is the due process clause violated?

Held. No. The grant of pardon and the determination of the terms and conditions of a conditional pardon are purely executive acts which are not subject to judicial scrutiny. In proceeding against a convict who has been conditionally pardoned and who is alleged to have breached the conditions of his pardon, the Executive Dept has two options: proceed against him under sec 64(i) RAC which determination is purely an executive act, not subject to judicial scrutiny; or to proceed under Art 159 of the RPC which determination is a judicial act consisting of trial for and conviction of violation of a conditional pardon. Where the President opts to proceed under Sec 64(i) of the RAC, as in the case at bar, no judicial pronouncement of guilt of a subsequent crime is necessary, much less conviction therefor by final judgment of a court, in order that a convict may be recommitted for the violation of his conditional pardon. *Because a conditionally pardoned convict had already been accorded his day in court in his trial and conviction for the offense for which he was conditionally pardoned, sec 64(i) of the RAC is not violative of the due process clause*.

Pardon implies guilt.

Effects of Pardon – frees the individual from all the penalties and legal disabilities and restores him to all his civil rights, but, UNLESS grounded on innocence, does not wash out the moral stain; cannot preempt the appointing power although it restores eligibility.

Monsanto v. Factoran, Jr.
GR 78239, 170 SCRA 190 [Feb 9, 1989]

Facts. Petitioner *Monsanto* (then Asst. Treasurer of Calbayog City) was among others who were convicted of the crime of estafa thru falsification of public documents. While her appeal was pending, the President extended her an absolute pardon which she accepted. She then requested she be restored to her former post which was forfeited by reason of her conviction. Her request was eventually referred to the Office of the President which held that she is not entitled to an automatic reinstatement. She now comes to this Court averring that as her case was pending on appeal at the time of her pardon and thus there was no final judgment of conviction, the general rules on pardon cannot apply to her. Her employment could not have been deemed forfeited.

Issue. Is a convicted public officer who has been granted an absolute pardon by the President entitled to reinstatement without the need of a new appointment?

Held. No. Having accepted the pardon, Monsanto is deemed to have abandoned her appeal and her unreversed conviction by the Sandiganbayan assumed the character of finality.[183] Pardon[184] implies guilt. It does not erase the fact of the commission of the crime and the conviction thereof. It does not wash out the moral stain. It involves forgiveness and not forgetfulness. Pardon granted after conviction frees the individual from all the penalties and legal disabilities and restores him to all his civil rights, but it cannot bring back lost reputation for integrity. Thus, we hold that *pardon does not ipso facto restore a convicted felon to public office necessarily relinquished or forfeited by reason of the conviction although such pardon undoubtedly restores her eligibility for appointment to that office*. She may apply for reappointment, but a pardon, albeit full and plenary, cannot preclude the appointing power from refusing appointment to anyone deemed to be of bad character.

[183] Note that the case at bar was decided when the amended 1973 Constitution was still in effect (under Art VII, sec 11 as amended thereof), hence pardon may still be granted without "conviction by final judgment"

[184] *Pardon* is defined as an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the Court. xxx. A pardon is a deed, the validity of which delivery is essential, and delivery is not complete without acceptance. (*Monsanto v. Factoran, Jr.*, 170 SCRA 190, 196)

The "conviction by final judgment" limitation mandates that no pardon may be extended before a judgment of conviction becomes final. Where appeal is pending, it must first be withdrawn to bring the conviction to finality.

People v. Salle, Jr.
GR 103567, 250 SCRA 581 [Dec 4, 1995]

Facts. Appellant Mengote was convicted of murder and destructive arson. While his appeal was pending, he was granted a conditional pardon. He was released on the same day and thereafter immediately left for his province without consulting his counselor who could not therefore file a Motion to Withdraw his appeal. His counselor now seeks that he be deemed to have abandoned his appeal by his acceptance of the conditional pardon so that the same may be considered valid and enforceable.

Issue. May a pardon be enforced while appeal is pending?

Held. No. The clause in *Art VII, Sec 19* of the Constitution "conviction by final judgment" mandates that *no pardon may be extended before a judgment of conviction becomes final*.[185] This clause which was absent in the amended 1973 Constitution was revived in the present Constitution to prevent the President from exercising executive power in derogation of the judicial power. We now declare that the *"conviction by final judgment" limitation prohibits the grant of pardon to an accused during*

[185] *A judgment of conviction becomes final when:*
(a) no appeal is seasonably perfected;
(b) the accused commences to serve the sentence;
(c) the right to appeal is expressly waived in writing, except where the death penalty was imposed by the trial court; and
(d) the accused applies for probation, thereby waiving his right to appeal. (*People v. Salle, Jr.*, 250 SCRA 581, 589)

the pendency of his appeal from his conviction by the trial court. Hence, before an appellant may be validly granted pardon, *he must first ask for the withdrawal of his appeal, i.e. the appealed conviction must first be brought to finality*.[186] Wherefore, xxx the conditional pardon granted Mengote shall be deemed to take effect only upon the grant of withdrawal of his appeal.

A public servant acquitted because of innocence is ipso facto reinstated with the grant of executive clemency and is entitled to back wages

Garcia v. Chairman, Commission on Audit
GR 75025, 226 SCRA 356 [Sept 14, 1993]

Facts. *Garcia* was a Supervising Lineman of the Bureau of Telecommunications (the Bureau) when he was summarily dismissed from the service on the ground of dishonesty in accordance with the decision rendered in the administrative case against him for the loss of several telegraph poles. Based on the same facts, a criminal case for theft was filed against him for which he was acquitted. His acquittal was founded on the fact that he did not commit the offense imputed to him. He thereafter sought reinstatement but was denied by the Bureau, so he sought executive clemency. The executive clemency was granted to him. He then filed with Commission on Audit a claim for payment of back wages but was denied. Hence, this petition.

Issue. Is Garcia entitled to back wages?

Held. Yes. [The Court reiterated *Monsanto v. Factoran,* that pardon does not wash out the moral stain however] if the *pardon is based on the innocence* of the individual, it affirms this innocence and makes him a new man and as innocent as if he had not been found guilty of the offense charged thereby restoring to him his clean name xxx prior to the finding of guilt. Such is the case at bar. The executive clemency *ipso facto* reinstated him and that *automatic reinstatement* also *entitles him to back wages*. The right to back wages are meant to afford relief to those who have been illegally dismissed and were thus ordered reinstated or those otherwise acquitted of the charges against them. Further, the *dismissal of Garcia was not a result of any criminal conviction* that carried with it forfeiture of the right to hold public office,[187] *but it is the direct consequence of an administrative decision* of a branch of the Executive Department over which the President has power of control. The executive clemency thereby nullified his dismissal. His separation from the service being null and void, he his thus entitled to back wages.

A lawfully convicted public servant later pardoned and reinstated is NOT entitled to back wages

Sabello v. DECS
GR 87687, 180 SCRA 623 [Dec 26, 1989]

Facts. *Sabello* was an Elementary School Principal of a barrio high school in financial deficit. With the honest mistake of thinking the barrio high school was a barrio project, Sabello was authorized by the barrio council to withdraw from the barrio's funding and deposit the same in the name of the barrio high school which he did. That was a grave error as it involved the very intricacies in the disbursement of govt funds. He was convicted. Later, he was granted absolute pardon. He was reinstated, although to the wrong position. He now claims for back wages.

Issue. Is Sabello entitled to back wages?

Held. No. Sabello was lawfully separated from the govt service upon his *conviction* for an offense. Thus, although his reinstatement had been duly authorized, it did not thereby entitle him to back wages. Such right is

[186] *Rule in the processing and grant of pardons* – "Any application xxx [for pardon], should not be acted upon or the process toward its grant should not be begun unless the appeal is withdrawn. Accordingly, the agencies or instrumentalities of the Govt concerned must require proof from the accused that he has not appealed from his conviction or that he has withdrawn his appeal. Such proof may be in the form of a certification issued by the trial court or the appellate court, as the case may be. The acceptance of the pardon shall not operate as an abandonment or waiver of the appeal, and the release of an accused by virtue of a pardon, commutation of sentence, or parole before the withdrawal of an appeal shall render those responsible therefor administratively liable. Accordingly, those in custody of the accused must no solely rely on the pardon as a basis for the release of the accused." (*Ibid.,* p. 592)

[187] Unlike in *Monsanto v. Factoran, supra.*

afforded only to those who have been illegally dismissed and were thus ordered reinstated or to those otherwise acquitted of the charge against them.

Executive clemency may be extended to those convicted not only in criminal but also in administrative cases in the Executive Dept.; administrative cases in the Judicial and Legislative Depts. are not included.

Llamas v. Orbos
GR 99031, 202 SCRA 844 [Oct 15, 1991]

Facts. Vice Gov. *Llamas* of Tarlac filed with the DILG an administrative complaint against his Governor, charging him of violation of the Local Govt Code and other laws including the Anti-Graft and Corrupt Practices Act. DILG found the Governor guilty and suspended him for 90 days. Llamas then assumed office as Acting Governor. The Governor applied for executive clemency which was granted by the President. He then reassumed governorship. Llamas now comes to this Court claiming that the President acted with grave abuse of discretion amounting to lack of jurisdiction in extending the executive clemency as the same, he avers among others, only applies to criminal and not administrative cases.

Issue. Does the President have the power to grant executive clemency in administrative cases?

Held. Yes, but only those in the Executive Department. The Constitution does not distinguish between which cases executive clemency may be exercised by the President,[188] so the Court must not also distinguish. In the same token, it would be unnecessary to provide for the exclusion of impeachment cases from the coverage of *Art VII, sec 19* if executive clemency may only be exercised in criminal cases. Further, if the President may grant executive clemency in criminal cases, with much more reason can she grant the same in administrative cases, which are clearly less serious than criminal offenses. It is also evident from the intent of the Constitutional Commission that the President's executive clemency powers may not be limited in terms of coverage, except as already provided in the Constitution.[189] Moreover, under the doctrine of Qualified Political Agency, in the exercise of her power of supervision and control over all executive depts., it is clear the President may grant executive clemency as she may also reverse or modify a ruling issued by a subordinate to serve the greater public interest. It must be stressed, however, that *when we say the President can grant executive clemency in administrative cases, we refer only to this in the Executive branch, not in the Judicial nor Legislative*.

[188] with the sole exclusion of impeachment

THE BORROWING POWER
Art VII, Sec 20.

The broad language of the Constitution on the President's foreign borrowing power makes no prohibition or distinction on the issuance of certain kinds of loans. The only restrictions: (1) prior concurrence of the Monetary Board, and (2) loans must be subject to limitations provided by law.

Constantino, Jr. v. Cuisia
GR 106064, 472 SCRA 505 [Oct 13, 2005]

Facts. Petitioners are suing as taxpayers. Respondents were members of the Philippine Debt Negotiating Team which entered the Republic into debt-relief contracts with its foreign commercial bank creditors pursuant to the Philippine Comprehensive Financing Program of 1992 (the Program). The Program was designed to manage the country's foreign debt problem in a manner aimed to lessen the burden on Filipino taxpayers. It extinguished portions of the country's pre-existing loans through either debt buyback or bond-conversion. The *buyback approach* essentially pre-terminated portions of public debts while the *bond conversion scheme* extinguished public debts through the obtainment of a new loan by virtue of a sovereign bond issuance, the proceeds of which in turn were used for terminating the original loan.

[189] Art IX-C, Sec 5. "No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the [COMELEC]."

Petitioners assail the constitutionality of the debt-relief contracts. They aver, among others, that the debt-relief contracts are beyond the foreign borrowing powers granted to the President under *Art VII, sec 20* of the Constitution, claiming that the buyback and bond[190] conversion schemes are neither "loans"[191] nor "guarantees" contemplated therein.

RA 245 allows foreign loans to be contracted in the form of, *inter alia*, bonds. RA 240, on the other hand, specifically allows the President to pre-terminate debts without further action from Congress.

Issue. Are the *buyback* and *bond conversion* schemes beyond the foreign borrowing powers of the President?

Held. No. *The language of the Constitution* is simple and clear as it *is broad*. It *allows the President to contract and guarantee foreign loans*. *It makes no prohibition on the issuance of certain kinds of loans* or distinctions as to which kinds of debt instruments are more onerous than others. *The only restriction the Constitution provides, aside from the prior concurrence of the Monetary Board, is that the loans must be subject to limitations provided by law*. In this case, the bond conversion scheme is authorized by RA 245, and the buyback scheme by RA 240.

The buyback scheme is neither a guarantee nor a loan—so petitioners argue—but it *is a necessarily implied power which springs from the grant of the foreign borrowing power*. The President is not empowered to borrow money from foreign banks and govts on credit of the Republic only to be left bereft of authority to implement the payment despite appropriation therefor. It is inescapable from the standpoint of reason and necessity that the authority to contract foreign loans and guarantees without restrictions on payment or manner thereof coupled with the availability of the corresponding appropriations, must include the power to effect payments or to make payments unavailing by either restructuring the loans or even refusing to make any payment altogether.[192]

[190] *Bonds* are securities that obligate the issuer to pay the bond-holder a specified sum of money, usually at specific intervals, and to repay the principal amount of the loan at maturity. The word "bond" means contract, agreement, or *guarantee*. An investor who purchases a bond is lending money to the issuer, and the bond represents the issuer's contractual promise to pay interest and repay principal according to specific terms. A short-term bond is often called a *note.* (*Constatino, Jr. v. Cuisia*, 472 SCRA 505, 525)

[191] *Loans* are transactions wherein the owner of a property allows another party to use the property and where customarily, the latter promises to return the property after a specified period with payment for its use, called *interest.* (*ibid.*)

THE DIPLOMATIC POWER
Art VII, Sec 21.

Concurrence by Senate is required in "treaties", but NOT in "executive agreements"

Commissioner of Customs v. Eastern Sea Trading
No. L-14279, 3 SCRA 351 [Oct 31, 1961]

Facts. Respondent *Eastern Sea Trading* (EST) was the consignee of several imported shipments which were declared forfeited to the Govt having been found to lack the required certificates by the Central Bank. EST appealed, but the decision was affirmed by petitioner *Commissioner of Customs* and so the matter was taken to the Court of Tax Appeals (CTA) which reversed the decision in favor of EST. Petitioner Commissioner now seeks the review of the decision rendered by the CTA which was grounded, among others, on the basis that the seizure and forfeiture of the goods imported from Japan cannot be justified under EO 328 (an executive agreement between Phils. and Japan) for it believes the same to be of dubious validity. CTA entertained doubt because of the fact that the Senate had not concurred in said EO's making.

Issue. Is the concurrence of the Senate required before entering international "executive agreements"?

Held. No. The concurrence of the Senate is required by our Constitution in the making of "treaties," which are, however, distinct and different from "executive agreements"[193] which may be validly entered into and become

[192] More fundamentally, when taken in the context of sovereign debts, a buyback is simply the purchase by the sovereign issuer of its own debts at a discount. (*Id*., p. 531)

[193] *Treaties and Executive Agreements, distinguished*. – International agreements involving political issues or *changes of national policy* and those involving international arrangements

binding through executive action without such concurrence. Decision appealed from reversed.

The President has the sole authority to negotiate and ratify treaties. The only role of the Senate is giving or withholding its consent to the ratification.

Pimentel, Jr. v. Office of the Executive Secretary
GR 158088, 462 SCRA 622 [Jul 6, 2005]

Facts. The treaty *Rome Statute* established the International Criminal Court. The Philippines signed the treaty through a member of the Phil. Mission to the UN. On the theory that *Art VII, Sec 21* of the Constitution means the power to ratify treaties belong to the Senate, Sen. *Pimentel, Jr.* et al. filed this instant petition seeking to compel the respondents to transmit the signed text of the treaty to the Senate for ratification.

Issue. Does the executive department have a ministerial duty to transmit to the Senate the copy of the treaty signed by a member of the Phil. Mission to the UN even without the signature of the President?

Held. No. In our system of govt, the *President has the sole authority to negotiate* with other states *in the realm of treaty-making*.[194] And under the Constitution, *he also has the sole power to ratify a treaty*, subject to concurrence of the Senate. This participation of the legislative branch was deemed essential to provide a check on the executive in the field of foreign relations. *The role of the Senate, however, is limited only to giving or withholding its consent, or concurrence, to the ratification of a treaty*. Hence, it is within the authority of the President to refuse to submit a treaty to the Senate or, having secured its consent for its ratification, refuse to ratify it. Petition dismissed.

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of a *permanent* character usually take the form of *treaties*. But international agreements embodying *adjustments of detail carrying out well-established national policies* and traditions and those involving arrangements of a more or less *temporary* nature usually take the form of *executive agreements*. Agreements concluded by the President which fall short of treaties are commonly referred to as executive agreements. They sometimes take the form of exchanges of notes and at other times that of more formal documents denominated "agreements" or "protocols." The point where ordinary correspondence xxx ends and agreements xxx begin, may sometimes be difficult of ready ascertainment. In order to show that the agreements are not anomalous and are not treaties, it would seem to be sufficient to refer to certain classes of agreements heretofore entered into by the Executive without the approval of the Senate. (*Commissioner of Customs v. Eastern Sea Trading*, 3 SCRA 351)

[194] *Usual steps in the treaty-making process*. – *negotiation, signature, ratification and exchange of the instruments of ratification*. (1) *Negotiation* may be undertaken directly by the head of state (President) but he now usually assigns this task to his authorized representatives. If and when the negotiators finally decide on the terms of the treaty, the same is opened for (2) *signature* which is primarily intended as a means of authenticating the instrument and for the purpose of symbolizing the good faith of the parties. It is usually done by the state's authorized representative to the diplomatic mission. (3) *Ratification* is the formal act by which a state confirms and accepts the provisions of a treaty. It is generally held to be an executive act, undertaken by the head of the state. This signifies the final consent of the State and binds the State. Sometimes, this is dispensed with and the treaty is deemed effective upon its signature unless there is a different date in the effectivity clause agreed upon. (4) *Exchange of instruments* usually signifies effectivity of the treaty. (*Pimentel, Jr., v. Office of the Executive Secretary*, 462 SCRA 622, 634)

ARTICLE VIII. JUDICIAL DEPARTMENT

JUDICIAL POWER
Art VIII, Sec 1.

Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that:

(1) there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made; and

(2) the controversy ensuing therefrom is brought before the tribunal… clothed with power and authority to determine what that law is and thereupon adjudicate.

Santiago, Jr. v. Bautista
No. L-25024, 32 SCRA 188 [Mar 30, 1970]

Facts. Petitioner *Santiago, Jr.*, grade VI student, was adjudged by his school's "Committee On The Rating Of Students For Honor" to receive the third honors on their graduation. His parents believing he has been prejudiced, that he should have gotten a better rank, filed a civil action which was dismissed by the lower court. They now file with this Court this special civil action of *certiorari* averring, among others, that the said Committee exercised grave abuse of discretion. Respondent members of the Committee contend, among others, that the Committee whose actions are condemned herein by the petitioner is not the "tribunal, board or officer exercising judicial functions"[195] against which an action for certiorari may lie under Rule 65, Sec 1 of the Rules of Court.[196]

Issue. Does the *Committee on the Ratings of Students of Honor* fall within the category of the "tribunal, board or officer exercising judicial functions" contemplated by Rule 65, Sec 1 of the Rules of Court?

Held. No.[197] The Committee whose actions are questioned in this case exercised neither judicial nor quasi-judicial functions in the performance of its assigned task. *Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought, in turn, before the tribunal, board or officer clothed with power and authority to determine what that law is and thereupon adjudicate the respective rights of the contending parties*. There is no rule of law that provides that when teachers sit down to assess the individual merits of their pupils for the purposes of rating them for honors, such function involves the determination of what the law is and that they are therefore automatically vested with judicial functions. Herein allegations relating to grave abuse of discretion are errors not some wrong which arise from deprivation or violation of a right. Judgment of lower court affirmed.

Political questions may still come within the powers of the Court to review under its expanded jurisdiction (2nd clause, par.2, Sec 1, Art VIII).

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[195] *Judicial function*, in general, is to determine what the law is, and what the legal rights of parties are, with respect to a matter in controversy. One clothed with the authority to determine such questions acts judicially. *Judicial power* implies the construction of laws and the adjudication of legal rights. (*Santiago, Jr. v. Bautista,* 32 SCRA 188)

[196] Rule 65, Sec 1. *Petition for certiorari*. *When any tribunal, board, or officer exercising judicial functions*, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, no any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer. xxx

[197] In order that a special action of *certiorari* may be invoked, the ff must exist: (1) there must be a *specific controversy involving rights of persons or property* and said controversy is brought before a tribunal, board or officer for hearing and determination of their respective rights and obligations, (2) *the tribunal*… before whom the controversy is brought *must have the power and authority to pronounce judgment and render a decision* on the controversy *construing and applying the laws to that end* and (3) *the tribunal… must pertain to that branch of the sovereign power which belongs to the judiciary*, or at least, which does not belong to the legislative or executive dept. (*Santiago, Jr. v. Bautista, supra.*)

Daza v. Singson
GR 86344, 180 SCRA 496 [Dec 21, 1989]
See under *SEPARATION of POWERS,* p. 43

Judicial power may be regulated and defined by law. Hence, there is nothing unconstitutional about a law prohibiting the courts from issuing injunctions in certain cases.

Where no right legally demandable and enforceable exists, controversies arising therefrom are not subject to judicial review.

Mantruste Systems, Inc. v. CA
GR 86540-41, 179 SCRA 136 [Nov 6, 1989]

Facts. For over a year, Development Bank of the Philippines (DBP) leased its *Bayview Plaza Hotel* to petitioner *Mantruste Systems, Inc.* (MSI) for its operation. MSI allegedly advanced P12M to make the Hotel operational. Pres. Aquino, in the exercise of her legislative power, issued Proc. No. 50 which launched the privatization of certain Govt assets, including the Bayview Hotel. Accordingly, the Hotel was transferred from DBP to the Asset Privatization Trust (the Trust) for disposition and was opened to public bidding in which it was awarded to another. Claiming that they have a right of retention over the Hotel, MSI sought a writ of preliminary injunction which was granted by the RTC for the reason, among others, that Proc. No. 50-A was unconstitutional as Sec 31 thereof impinges upon the judicial power defined in *Art VIII, Sec 1* of the Constitution. Said Sec 31 provides that "No court xxx shall issue any xxx injunction against the Trust in connection with the xxx disposition of assets transferred to it… Nor shall such xxx be issued against any purchaser of assets sold by the Trust xxx." *CA* nullified the writ, hence this petition.

Issue. Does said Sec 31 impinge upon the judicial power of courts?

Held. No. Under Sec 2, Art VIII of the Constitution, the power to define, prescribe and apportion the jurisdiction of the various courts belongs to the legislature.[198] Hence, judicial power may be regulated and defined by law, and the law in this particular case (Proc. No. 50-A) provides that judicial power may not be exercised in the form of an injunction against the acts of the Trust xxx. Moreover, judicial power refers to the power to settle actual controversies involving rights which are legally demandable and enforceable. MSI's claim of a right to retention does not exist, and thus, neither does the right to the relief (injunction) demanded. Settled is the rule that lessees are not possessors in good faith. They know that their occupancy continues only during the life of the lease; hence, "he builds his house at his own risk". Thus, they cannot as a matter of right, recover the value of their improvements (in this case the P12M) from the lessor, much less retain the premises until they are reimbursed. Petition dismissed

However, where the issues involved are questions of law, laws prohibiting the courts from issuing injunctions/restraining orders in administrative controversies will not preclude the courts [from issuing such].

Malaga v. Penachos, Jr.
GR 86695, 213 SCRA 516 [Sept 3, 1992]

Facts. Iloilo State College of Fisheries (ISCOF) through its Pre-qualification, Bids and Awards Committee (PBAC) published an Invitation to Bid for the construction of a Micro Laboratory Building at ISCOF. The PBAC advertised therein the deadlines for the submission of the pre-qualification documents. Petitioner *Malaga* et al. (contractors) submitted theirs accordingly but because the deadline was moved up without their knowledge[199] (as such change was merely posted in the ISCOF bulletin board), they were disqualified to bid for being late. Malaga et al. filed a complaint. A TRO was hence issued, however it was lifted on the ground

[198] Except that Congress may not deprive the SC of its jurisdiction over cases enumerated in Sec 5, Art VIII of the Constitution (Art VIII, Sec 2). It also may not increase SC's appellate jurisdiction without the SC's consent (Art VI, Sec 30).

[199] Deadline for submission of pre-qualification docs advertised as Dec 2, 1988 without stating the hour. It was moved up to 10:00 the same day.

that the Court was prohibited to issue such under PD 1818.[200] Hence, this petition. Malaga et al. contends that PD 1818 is not applicable in this case because, among others, the prohibition in PD 1818 presumes a valid and legal govt project, not one tainted with anomalies like the instant project.[201]

Issue. Does the court have jurisdiction to issue a restraining order against PBAC notwithstanding the prohibition in PD 1818?

Held. Yes. It has been held that *the prohibition pertained to the issuance of injunctions/restraining orders by courts against administrative acts in controversies involving facts or the exercise of discretion in technical cases.* However, *on issues definitely outside of this dimension and involving questions of law, courts could not be prevented by such PD from exercising their power to restrain* xxx. In the case at bar, what is involved is noncompliance with the procedural rules on bidding which require strict observance for securing competitive bidding to prevent collusion in the award of these contracts to the detriment of the public. PD 1818 was not intended to shield from judicial scrutiny irregularities committed by administrative agencies such as the anomalies above-described. Restraining order upheld.

Bona fide suit — cases and controversies where one actually sustains [or is in danger of sustaining] injury … mere apprehension [of an injury] is not enough.

PACU v. Secretary of Education
No. L-5279, 97 Phil 806 [Oct 31, 1955]

Facts. Petitioner *Philippine Assoc of Colleges and Universities* (PACU) assails the constitutionality of Act No. 2706 as amended and RA 139. Act No. 2706 provides that before a private school may be opened to the public, it must first obtain a permit from the Sec. of Education, which they aver restrains the right of a citizen to own and operate a school. Said Act also confers on the Sec. of Education the duty to maintain a general standard of efficiency in all private schools xxx. PACU contends this confers unlimited power constituting unlawful delegation of legislative power. On the other hand, RA 139 confers upon the Board of Textbooks power to review all textbooks to be used in private schools and prohibit the use of those deemed, in sum, unsuitable. PACU avers this is censorship in "its baldest form".

Issue. May PACU validly assail the constitutionality of foregoing statutes?

Held. No. The action is premature. There is no justiciable controversy as petitioners have suffered no wrong and therefore no actual and positive relief may be had in striking down the assailed statutes.[202] Petitioner private schools are operating under the permits issued to them pursuant to the assailed Act, and there is no threat, as they do not assert, that the Sec. of Education will revoke their permits. Mere apprehension that the Secretary might, under the law, withdraw the permit does not constitute a justiciable controversy. Petitioners also do not show how the "general standard of efficiency" set by the Secretary has injured any of them or interfered with their operation. It has not been shown that the Board of Textbooks has prohibited certain texts to which petitioners are averse and are thereby in danger of losing substantial privileges or rights.

Issues premised on contingent events are hypothetical. They have yet to ripen to actual controversies, and cannot be the basis for raising questions of constitutionality.

Mariano, Jr. v. COMELEC
GR 118577, 242 SCRA 211 [Mar 7, 1995]

[200] PD 1818, Sec 1: "No Court xxx shall have jurisdiction to issue any restraining order xxx in any case xxx involving infrastructure project xxx or other natural resource devt project of the govt xxx to prohibit any xxx entity xxx from proceeding with xxx the implementation of any such project xxx"

[201] Other anomalies alleged: the moving up of the time of bidding from Dec 12, 3pm (as published) to 10am without due notice, and the plans and specifications that are to be supplied mandatorily to all bidders were issued only 10 days before bidding day (not 30 days as required by law).

[202] *Bona fide suit* — cases and controversies where one *actually* sustains injury from the operation of the law.

The authority of the courts to pass upon the constitutionality of a law is legitimate only in the last resort, and as necessity in the determination of real, vital controversy between litigants (*PACU v. Secretary of Education*, 97 Phil 806, 810)

Facts. RA 7854 is "An Act Converting the Municipality of Makati in Into a Highly Urbanized City xxx". Sec 51 thereof (which provides that the incumbent officials of the Municipality shall continue as the officials of the City of Makati) carries the proviso "that the new city will acquire a new corporate existence". Petitioners contend this disregards the limit of 3 terms of office of elective local officials set in the Constitution. They argue that the "new corporate existence" will restart the term of the present municipal elective officials of Makati disregarding the terms previously served by them. They particularly point to incumbent Mayor Binay who has already served for 2 consecutive terms.

Issue. May the petitioners validly challenge the constitutionality of said Sec 51?

Held. No. The petitioners have far from complied with the requirements[203] before this Court may have the jurisdiction to pass upon questions of constitutionality. The petition is premised on the occurrence of many contingent events, i.e. Mayor Binay will run again this coming elections, that he would be re-elected, and that he would seek re-election for the same post in the 1998 elections. Petitioners, thus, merely pose a hypothetical issue which has yet to ripen to an actual controversy. Petitioners who are residents of Taguig (except Mariano) are not also the proper parties to raise this issue.

A "proper party" is one who has sustained or is in danger of sustaining an immediate injury as a result of the [governmental] acts complained of.

Macasiano v. National Housing Authority
GR 107921, 224 SCRA 236 [Jul 1, 1993]

Facts. Petitioner *Macasiano* seeks to declare as unconstitutional Secs 28 and 44 of RA 7279 (Urban Devt and Housing Act of 1992). Assailed Sections provide as a general rule that eviction or demolition shall be discouraged, and that a moratorium of 3 years shall be provided on the eviction of all program beneficiaries. Macasiano predicates his *locus standi* on his being a consultant of the Department of Public Works and Highways (DPWH) and his being a taxpayer. As to the first, he alleges that said Secs "contain the seeds of a ripening controversy that serve as a drawback" to his "tasks and duties regarding demolition of illegal structures".

Issue. May Macasiano validly challenge the constitutionality of the foregoing provisions of law?

Held. No. The first two fundamental requisites for a successful judicial inquiry into the constitutionality of a law are absent. There is *no actual controversy*. Macasiano does not claim that he has been actually prevented from performing his duties as a consultant and exercising his rights as a property owner because of the assertion by other parties of any benefit under the challenged sections of the said Act. He is likewise *not a proper party*. As a DPWH consultant, he is not vested with any authority to demolish obstructions and encroachments on properties of the public domain, much less on private lands. Nor does the petitioner claim he is an owner of an urban property whose enjoyment and use would be affected by the challenged provisions. "As far as a taxpayer's suit is concerned, this Court is not devoid of discretion as to whether or not it should be entertained."

An "ACTUAL case or controversy" presupposes that it is NOT moot or academic.[204]

Joya v. PCGG
GR 96541, 225 SCRA 568 [Aug 24, 1993]

Facts. Petitioners are Filipino citizens, taxpayers and artists who claim to be deeply concerned with the preservation and protection of the country's artistic wealth.

This petition concerns old Masters Paintings and antique silverware alleged to be part of the ill-gotten wealth of the late Pres. Marcos and his

[203] *Requirements before litigant may challenge the constitutionality of a law*: (1) xxx *actual case* or controversy; (2) question of constitutionality must be raised by the *proper party*; (3) constitutional *question* must be raised at the *earliest possible opportunity*; and (4) the *decision* on the constitutional question must be *necessary to the determination of the case* itself (*Mariano, Jr. v. COMELEC*, 242 SCRA 211, 220-221)

[204] In *SANLAKAS v. Reyes*, G.R. No. 159085 (2004), the Court decided the merits of the petitions despite their mootness because the "question… is capable of repetition yet evading review." See p. 113

cronies. These were seized from Malacañang and the Metropolitan Museum of Manila, and were consigned for sale at public auction by the Govt through respondent *PCGG*. Believing the items to be historical relics of cultural significance, petitioners filed the instant petition for prohibition and mandamus to enjoin the PCGG to proceed with an auction sale with prayer for preliminary injunction. The application for preliminary injunction was denied and the auction proceeded as scheduled.

Issue. Does the instant petition comply with the legal requisites for this Court to exercise its power of judicial review over this case?

Held. No. The petitioners have no legal standing[205] to file this petition. The confiscation of the subject items by the Aquino administration should not be understood to mean that its ownership has automatically passed on to the govt without complying with constitutional or statutory requirements. Any dispute on the statutory defects in the acquisition and their subsequent disposition must be raised only by the proper parties—the true owners thereof—whose authority to recover emanates from their proprietary rights. Having failed to show that they are the legal owners of the artworks or that these have become publicly owned, petitioners do not possess any legal right to question their alleged unauthorized disposition.[206] Furthermore, for a court to exercise its power of adjudication there must be an actual case or controversy[207] — one which must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. A case becomes moot and academic when its purpose has become stale, such as the case at bar since the purpose of the petition is to enjoin respondent public officials from holding the auction sale which have long passed.

[205] "*Legal standing" means a personal and substantial interest*… . The term "interest" is *material interest*, an interest in the issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Moreover, the interest of the party must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party. (*Joya v. PCGG*, 225 SCRA 568, 576)

[206] Certain instances when the Court allowed *exceptions to the rule on legal standing*: (1) when a citizen brings a case for *mandamus* to procure the enforcement of a public duty *for the fulfillment of a public right* recognized by the Constitution, and (2) when a *taxpayer* questions the validity of a governmental act authorizing the disbursement of public funds. (*ibid*.)

[207] "*Controversy"* – involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution (*Id.*)

When a Mandamus proceeding involves assertion of a public right, the real party in interest is the general public, thus the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen.

Legaspi v. Civil Service Commission

No. L-72119, 150 SCRA 530 [May 29, 1987]

Facts. Petitioner *Legaspi*, a Filipino citizen, requested for information on the civil service eligibilities of certain persons employed as sanitarians in the Health Dept of Cebu City. Respondent *Civil Service Commission* denied his access. He now invokes his fundamental right to information on matters of public concern and prays for the issuance of the writ of Mandamus to compel the Commission to disclose said information. The Solicitor General challenges Legaspi's personality to institute this petition on the ground that he does not possess any *actual* interest in the information sought to be disclosed.

Issue. Does Legaspi have the personality, the actual interest required in filing this suit?

Held. Yes. It is clear that Legaspi anchors his case upon the right of the people to information on matters of public concern, which, by its very nature is a public right. When a Mandamus proceeding involves the assertion of a public right (to procure the enforcement of a public duty), the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general "public" (who are the real party in interest) which possesses the right.

Dumlao v. COMELEC

No. L-52245, 95 SCRA 392 [Jan 22, 1980]

Facts. Petitioner *Dumlao* is a former Governor of Nueva Vizcaya who has filed his certificate of candidacy for the same office in the forthcoming elections. He impugns the constitutionality of Sec 4 of BP 52 which disqualifies from running in office one who is a retired elective provincial official of 65 years of age at the commencement of the term of office sought to be elected in. He claims it is a class legislation.

Petitioners Igot (member of the bar) and Salapantan are taxpayers and qualified voters. They assail BP 51 which disqualifies from running in office those who have committed any act of disloyalty to the State.

Issue. May the petitioners validly challenge the constitutionality of the foregoing provisions of law?

Held. No. Save for the third requisite, all the requisites for the successful judicial inquiry into the constitutionality of a law have not been complied with. There is *no actual case and controversy*. Dumlao has not been adversely affected by the application of the provision he seeks to invalidate. No petition seeking Dumlao's disqualification has been filed before COMELEC. His is a question posed in the abstract, a hypothetical issue, and in effect, a petition for an advisory opinion. Igot and Salapantan are *not proper parties*. Neither has been convicted nor charged with acts of disloyalty to the State, nor disqualified from being candidates. Theirs is a generalized grievance. They have no personal nor substantial interest at stake. And there is no necessity to pass upon the constitutionality of the assailed laws for none of the petitioners are with cause of action.

Only when the act complained of directly involves an illegal disbursement of public funds raised by taxation will the taxpayer's suit be allowed.

Bugnay Construction and Devt Corp v. Laron
GR 79983, 176 SCRA 240 [Aug 10, 1989]

Facts. Dagupan City rescinded its lease contract of a city lot with the P and M Corp. (P and M). During the pendency of the resolution of a motion to reconsider filed by P and M, the City Mayor entered into a Contract of Lease with petitioner *Bugnay Construction* (Bugnay) over the lot area in dispute. P and M and their counselor Ravanzo filed separate civil actions for injunction. The City moved to dismiss on the ground that Ravanzo is not the real party in interest. Ravanzo predicates his legal standing on his being a taxpayer of Dagupan.

The terms of contract between Bugnay and the City reveal that the former shall shoulder all expenses of the construction of the market building over the lot.

Issues. Does Ravanzo have legal standing to file suit as taxpayer?

Held. No. *Only when the act complained of directly involves an illegal disbursement of public funds raised by taxation will the taxpayer's suit be allowed.* In the case at bar, the lease contract entered into between Bugnay and the City show no public funds have been or will be used in the construction of the market building. No disbursement of public funds being involved in the challenged transaction, the *locus standi* claimed by Ravanzo is non-existent.

Where the issue is of transcendental importance of paramount public interest, the procedural barrier of the issue on a petitioner's locus standi MAY be set aside.

Kilosbayan, Inc. v. Guingona, Jr.
GR 113375, 232 SCRA 110 [May 5, 1994]

Facts. Philippine Charity Sweepstakes Office (PCSO), with the approval of the President, entered into a Contract of Lease with Phil. Gaming Management Corp. (PGMC) which was organized through the initiative of the Berjaya Group Berhad, a foreign company. This was executed despite vigorous opposition from petitioner *Kilosbayan* on account of its alleged immorality and illegality. Kilosbayan, an organization of "civic-spirited citizens," filed the instant petition as taxpayers and concerned citizens. Respondents challenge the petitioners' legal standing to file this petition.

Issue. Must the action fail for the alleged lack of a legal standing?

Held. No. We find the instant *petition to be of transcendental importance* to the public, and the issues it raised are of *paramount public interest*. The ramifications of such issues immeasurably affect the social, economic, and moral wellbeing of the people even in the remotest barangays of the country and the counter-productive and retrogressive effects of the envisioned on-line lottery system are as staggering as the billions in pesos it is expected to raise. In the exercise of its sound discretion, in keeping with its duty to determine whether or not the other branches of govt have exerc[illegible] grave abuse of discretion given them, this *Court hereby brushes aside the procedural barrier* which the respondents tried to take advantage of. The Court voted 7-6 on this issue.[208]

[208] The Contract of Lease was eventually declared invalid for being violative of the charter of PCSO

Any member of Congress has legal standing to question the validity of Presidential vetoes where the veto is claimed to have been made with grave abuse of discretion resulting in the encroachment of the Executive in the Legislative domain.

Philippine Constitutional Association (PHILCONSA) v. Enriquez
GR 113888, 235 SCRA 506 [Aug 19, 1994]

Facts. The President signed the GAA of 1994 with certain conditions manifest in his Presidential Veto Message. Petitioners, as members of the Senate, now seek judicial intervention to rule on the constitutionality of the presidential vetoes. The Solicitor General argues that the other petitions seek a remedy political, in effect saying the petitioners do not have the requisite legal standing to sue.

Issue. Do the petitioners senators have legal standing to sue?

Held. Yes. A member of Congress has the legal standing to question the validity of a presidential veto or condition imposed on an item in an appropriation bill. Where the veto is claimed to have been made without or in excess of authority vested on the President by the Constitution, the issue of impermissible intrusion of the Executive into the domain of the Legislature arises. An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress.

The prevailing doctrines allow taxpayers suit to question contracts entered into by the national govt or GOCCs… and disallow those when only municipal contracts are involved.

Tatad v. Garcia, Jr.
GR 114222, 243 SCRA 436 [Apr 6, 1995]

Facts. The Department of Transportation and Communications (DOTC) sought to construct LRT III along EDSA in accordance with the Build-Operate-Transfer (BOT) Law. The project was awarded to EDSA LRT Corp. Ltd. under its "Revised and Restated Agreement to Build, Lease and Transfer an LRT System for EDSA" with the DOTC. Sen. *Tatad* et al., as taxpayers and members of the Senate, now seek to prohibit respondents from further implementing said Agreement on account of several alleged inconsistencies with the Constitution and the BOT Law. Respondents aver that Tatad et al. are not the real parties-in-interest and they do not have legal standing to sue.

Issue. Does Tatad et al. have legal standing to sue?

Held. Yes. The prevailing doctrines in taxpayer's suit are to allow taxpayers to question contracts entered into by the national govt or govt-owned or controlled corps. allegedly in contravention of the law (*Kilosbayan, Inc v. Guingona*) and to disallow the same when only municipal contracts are involved (*Bugnay Const. and Devt Corp. v. Laron*) For as long as the ruling in *Kilosbayan* on *locus standi* is not reversed, we are constrained to follow it and uphold the legal standing of petitioners as taxpayers to institute present action.

In class suits, there may be legal standing to file suit in behalf of succeeding generations based on the concept of intergenerational responsibility.

Oposa v. Factoran, Jr.
GR 101083, 224 SCRA 792 [Jul 30, 1993]
See under *Article II. FUNDAMENTAL PRINCIPLES and STATE POLICIES,* p. 33, issue (2)

Kilosbayan, Inc. v. Morato
GR 118910, 246 SCRA 540 [Jul 17, 1995]

Facts. As a result of the Court's ruling in the first *Kilosbayan* case,[209] PCSO forged a new and allegedly legal agreement with Phil. Gaming Management Corp. (PGMC): the Equipment Lease Agreement (ELA). Petitioners file this suit seeking to invalidate the ELA for the reason that it is substantially the same as the Contract of Lease nullified in the first case. Respondents again challenge the petitioners' *locus standi*. Petitioners contend the previous ruling sustaining their standing is now the "law of the case" and therefore the question of their standing can no longer be reopened.

[209] *Kilosbayan, Inc. v. Guingona, Jr.*, 232 SCRA 110. See p. 125

Issue. May the petitioners' *locus standi* be challenged anew notwithstanding the previous ruling sustaining it?

Held. Yes. The Doctrine of "law of the case"[210] is not applicable in this case. While this case is a sequel to the first *Kilosbayan* case, it is not its continuation. The doctrine applies only when a case is before a court a second time after a ruling by an appellate court, i.e. where both the parties and the case are the same in the first and in the subsequent. In the case at bar, the parties are the same but the cases are not. The ELA in this present case is essentially different from the 1993 Contract of Lease in the first case. Moreover, there is no constitutional question actually involved here and therefore, "standing" is, strictly speaking, not the issue since that is a concept in constitutional law.[211] On the contrary, what is raised here actually involves questions of contract law, more specifically whether petitioners have a legal right which has been violated. The issue, thus, is not "standing" but whether the petitioners are the "real parties-in-interest", those who have "present substantial interest". But petitioners do not have such present substantial interest in the ELA as would entitle them to bring this suit. We deny them of their right to intervene, but they may still raise their issues in an appropriate case before the Commission on Audit or the Ombudsman.

Legal standing may not be predicated upon a "generalized grievance". Concrete injury is indispensable to justify the exercise of judicial power.

[210] *Doctrine of "Law of the Case"* — whatever is once established as the controlling legal rule of decision between the *same parties* in the *same case* continues to be the law of the case xxx *so long as the facts* on which the decision was predicated *continue to be the facts* of the case before the court. It is the practice of the courts in refusing to reopen what has been decided. (*Kilosbayan, Inc. v. Morato*, 246 SCRA 559, 560)

[211] It was held in constitutional issues, *standing* restrictions require partial consideration of the merits as well as broader policy concerns relating to the proper role of the judiciary. The question as to "*real party in interest*" is whether he is "the party who would be benefitted or injured by the judgment, or the "party entitled to the avails of the suit." In contract law, real parties are those who are parties to the agreement or are prejudiced in their rights with respect to one of the contracting parties and can show the detriment, which would positively result to them from the contract even though they did not intervene in it, or who can claim a right to take part in a public bidding but have been illegally excluded from it. (*ibid*., p. 562, 564)

Lozada v. COMELEC

No. L-59068, 120 SCRA 337 [Jan 27, 1983]

Facts. This is a petition for mandamus to compel respondent *COMELEC* to call a special election to fill up the 12 existing vacancies in the Interim Batasan Pambansa pursuant to Art VIII, Sec 5(2) of the 1973 Constitution[212]. Petitioner *Lozada* predicates his standing on his being a taxpayer, voter and candidate for office in the Batasan, while petitioner Igot predicates his standing on his being a taxpayer.

Issue. Do the petitioners have *locus standi*?

Held. No. As taxpayers, petitioners may not file the instant petition. The act complained of is the inaction of the COMELEC to call a special election, as is allegedly its ministerial duty[213] under the foregoing constitutional provision, and therefore, involves no expenditure of public funds. They neither have requisite personality as voters. The alleged inaction of COMELEC to call special election would adversely affect only the generalized interest of all citizens. Standing to sue may not be predicated upon an interest of this kind (i.e. upon a "generalized grievance") for it is *concrete injury, whether actual or threatened, that is the indispensable element of a dispute, which can justify the Court's exercise of its jurisdiction*. Petitioners failed to demonstrate permissible personal stake.

FISCAL AUTONOMY
Art VIII, Sec 3.

Presidential veto of provisions in the GAB relating to the use of savings for augmenting items in the Judiciary's appropriation impairs the power of the

[212] "In case a vacancy arises in the Batasan Pambansa xxx the COMELEC shall call a special election to xxx elect the Member to serve the unexpired term"

[213] It was held that the cited constitutional provision does not apply to the Interim Batasan, only to the regular and consequently, the special election sought to be called is illegal for lack of legal basis/authority. (*Lozada v. COMELEC*, 120 SCRA 337)

Chief Justice to augment other items in its appropriation and is thus repugnant to Fiscal Autonomy.

Bengzon v. Drilon
GR 103524, 208 SCRA 133 [Apr 15, 1992]
See under *Article VI. LEGISLATIVE DEPARTMENT,* p. 85, issue (2)

The authority of the DBM to "review" SC issuances relative to court personnel and their compensation extends only to "calling its attention" lest they violate the Judiciary's fiscal autonomy.

Re: Clarifying and Strengthening the Organizational Structure and Administrative Set-Up of the Philippine Judicial Academy
AM No. 01-1-04-SC-PHILJA [Jan 31, 2006]

Facts. In 1994, the Court promulgated a resolution creating in the *PHILJA* the positions of SC Judicial Staff Officer and Supervising Judicial Staff Officer with Salary Grades (SG) 25 and 23, respectively. However, in 2005, the Department of Budget and Management (DBM) downgraded the titles and reduced the salary grades of said positions. SC issued a resolution again to retain the originally proposed titles and salary grades. The Office of the Chief Attorney now recommends that the Court reiterate its resolution.

Issue. Is the downgrading by DBM of the titles and salary grades of the positions created by the Court violative of the Fiscal Autonomy of the Judiciary?

Held. Yes. The Court reiterates its resolution, and the DBM is directed to implement Court resolutions. The task of the DBM is simply to review the compensation and benefits plan of the government agency or entity concerned and determine if it complies with the prescribed policies and guidelines issued in this regard. Thus, the role of the DBM is "supervisorial in nature." As such, the authority of the DBM to review SC issuances relative to court personnel on matters of compensation is even more limited, circumscribed as it is by the provisions of the Constitution, specifically on fiscal autonomy xxx. Clearly then, in the herein downgrading, the DBM overstepped its authority and encroached upon the Court's fiscal autonomy xxx. Thus, the authority of the DBM to "review" the plantilla and compensation of court personnel extends only to "calling the attention of the Court" on what it may perceive as erroneous application of budgetary laws and rules on position classification. The DBM may not overstep its authority in such a way as to cause the amendment or modification of Court resolutions.

COMPOSITION of the SUPREME COURT
Art VIII, Sec 4.

Limketkai Sons Milling, Inc. v. Court of Appeals
GR 118509, 261 SCRA 464 [Sept 5, 1996]

Facts. After the Court rendered a unanimous decision in favor of the petitioner, the Divisions of the Court underwent reorganization following the retirement of one of the Associate Justices. The private respondents filed a motion for reconsideration which was deliberated upon by the newly reorganized Third Division chaired by C.J. Narvasa. The previous decision was reversed by a majority vote. Petitioner now argues the case should be referred to the Court *en banc* alleging certain doctrines have been modified or reversed and challenging the present composition of the Third Division. It is asserted that the First Division should have been chaired by C.J. Narvasa, the Second by the next senior Justice and the Third by the third most senior Justice.

Issue. May the petitioner validly challenge the reorganization of the SC?

Held. No. *Reorganizations in the Supreme Court's Divisions are purely an internal matter to which parties have no business at all.*[214]

The President is mandated to fill vacancies in the SC within 90 days after the occurrence of the vacancy and in the rest of the Judiciary within 90 days after the JBC submits the short list of nominees, notwithstanding existence of a ban on midnight appointments under Sec 15, Art VII.

An ACTING Chief Justice is abhorrent to the Constitution.

[214] It was also held that no doctrines have been reversed or modified as alleged by petitioner. (*Limketkai Sons Milling, Inc. v. Court of Appeals*, 261 SCRA 464)

It is mandatory for the JBC to submit to the President the short list of nominees on or before the occurrence of the vacancy in the SC.

De Castro v. Judicial and Bar Council
GR 191002 [Mar 17, 2010; Apr 20, 2010]
See under *Article VII. EXECUTIVE DEPARTMENT,* p. 97, 99

POWERS of the SUPREME COURT
Art VIII, Sec 5-6.

Appellate Jurisdiction involving constitutionality.
Every court is charged with the duty of a purposeful hesitation before declaring a law unconstitutional. Presumption of constitutionality can be overcome only by the clearest showing that the Constitution was indeed violated. To doubt is to sustain.

Drilon v. Lim
GR 112497, 235 SCRA 135 [Aug 4, 1994]

Facts. Pursuant to Sec 187 of the Local Govt Code (LGC), petitioner Sec. of Justice *Drilon,* on appeal to him, declared the Manila Revenue Code null and void for non-compliance with the prescribed procedure in the enactment of tax ordinances and for containing certain provisions contrary to law and public policy. The City of Manila filed a petition in the lower court which ruled in their favor. The lower court concluded that said Sec 187 was unconstitutional in that it, among others, gave to the Secretary the power of control (vested by the Constitution in the President) and not of supervision only.

Issue. Is Sec 187 of the LGC unconstitutional?

Held. No. The lower court was rather hasty in invalidating the provision. *Every court is charged with the duty of a purposeful hesitation before declaring a law unconstitutional*. Utmost circumspection is advised bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers for the questioned act is usually the handiwork of the legislative or executive departments or both. It will be prudent, therefore, for lower courts, if only out of a becoming modesty, to defer to the higher judgment of this Court such questions of constitutionality which is better determined after a thorough deliberation of a collegiate body. The theory is that the measure was first carefully studied by the executive and the legislative departments and determined by them to be in accord with the Constitution. Such *presumption of constitutionality can be overcome only by the clearest showing that the Constitution was indeed violated. To doubt is to sustain.*

Power to Order a Change of Venue of Trial.
To warrant an order to change the venue of trial on the ground of prejudicial publicity, there must be actual prejudice, NOT merely a possibility of prejudice.

Larranaga v. Court of Appeals
GR 130644, 287 SCRA 581 [Mar 13, 1998]

Facts. *Larranaga*, a minor, was charged with 2 counts of kidnapping and serious illegal detention. His case was for preliminary investigation with the Office of the City Prosecutor of Cebu. Due to the extensive coverage of the proceedings by the Cebu media, he filed for a motion to transfer the venue of the preliminary investigation to Manila and to replace the authority conducting his preliminary investigation with the Office of the State Prosecutor alleging that the pervasive publicity influenced the people's perception of his character and guilt.

Issue. Should the Court grant his motion to transfer the venue of and replace the authority conducting his preliminary investigation?

Held. No. The Court is constrained to dismiss the Larranaga's motion to change the venue and the authority to conduct the preliminary investigation for lack of jurisdiction. He should address his plea to the DOJ which has control and supervision over the conduct of preliminary investigations. Nonetheless, even if the Court had jurisdiction, motion should still be denied because it failed to allege and prove that the City Prosecutor has been actually affected. Pervasive publicity is not *per se* prejudicial to the right of an accused to a fair trial. *To warrant a finding of prejudicial publicity* there must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the

barrage of publicity. *There must be actual prejudice shown from the totality of circumstances*. *It must be proved that the publicity fatally infected the fairness and impartiality* of the City Prosecutor.

Rule-making Power

Adjective laws operate only in a limited and unsubstantial manner.

Rule denying accused of his right to confront and cross-examine the witnesses against him in a preliminary investigation held to be only an adjective law and therefore constitutional (preliminary investigation — not essential part of due process).

Bustos v. Lucero

GR L-2068, 81 Phil 648 [Oct 20, 1948]

Facts. A warrant of arrest was issued for petitioner *Bustos* on the strength of the testimony of the complainant and certain witnesses. In the preliminary investigation, his counsel moved that the complainant present her evidence so that she and her witnesses could be examined and cross-examined. The fiscal and the private prosecutor objected, invoking Sec 11 of Rule 108, and the objection was sustained. Said Sec 11 denies the defendant the right to cross-examine witnesses in a preliminary investigation. Bustos now contends that said Sec 11 infringes [the now *Art VIII, sec 5(5)* of the Constitution]. It is argued that the rule in question deals with substantive matters and impairs substantive rights, to wit, his statutory and fundamental right to be confronted by and to cross-examine the witnesses for the prosecution.

Issue. Does the rule in question impair substantive rights thereby violating the constitutional limitation on the rule-making power of the Court?

Held. No. The rule in question is an adjective law and not a substantive law which creates substantive rights.[215] *Preliminary investigation is eminently and essentially remedial*; it is the first step taken in a criminal prosecution. Therefore, *it is not an essential part of due process of la*w. It may be suppressed entirely, and thus, mere restriction of the privilege formerly enjoyed thereunder cannot be held to fall within the constitutional prohibition. In the latter stage of the proceedings, the only stage where the guarantee of due process comes into play, he still enjoys to the full extent the right to be confronted by and to cross-examine the witnesses against him. As a rule of evidence,[216] said Sec 11 is also procedural. The entire rules of evidence have been incorporated into the Rules of Court. We cannot tear down Sec 11 of Rule 108 on constitutional grounds without throwing out the whole code of evidence embodied in these Rules. The distinction between "remedy" and "substantive right" is incapable of exact definition. This being so, it is inevitable that the SC in making rules should step on substantive rights, and the Constitution must be presumed to tolerate, if not to expect, such incursion as does not affect the accused in a harsh and arbitrary manner or deprive him of a defense, but operates only in a limited and unsubstantial manner to his disadvantage.

First Lepanto Ceramics, Inc. v. Court of Appeals

GR 110571, 237 SCRA 519 [Oct 7, 1994]

Facts. The Omnibus Investments Code of 1981 as amended provided that appeals from decisions of the Board of Investments (BOI) shall be the exclusive jurisdiction of the *CA*. Just a few months after the 1987 Constitution took effect (July 17, 1987), the Omnibus Investments Code of 1987 (EO 226) was promulgated which provided in Art 82 thereof that such appeals be directly filed with the SC. The SC later promulgated, under its

[215] *Substantive law and adjective law, distinguished*. – *Substantive law* creates, defines and regulates rights, or that which regulates the rights and duties which give rise to a cause of action. *Adjective or remedial law* prescribes the method of enforcing rights or obtains redress for their invasion. As applied to criminal law, substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be punished . (*Bustos v. Lucero*, 81 Phil 648)

[216] *Evidence*—the mode and manner of proving the competent facts and circumstances on which a party relies to establish the fact in dispute in judicial proceedings. It is identified with and *forms part of the method by which*, in private law, *rights are enforced and redress obtained*, and, in criminal law, *a law transgressor is punished*. (Criminal procedure refers to pleading, evidence and practice.) (*Ibid.*)

rule-making power, Circular No. 1-91[217] which confirmed the jurisdiction of the CA over appeals from the decisions of the BOI. SC's Second Division, relying on said Circular, accordingly sustained the appellate jurisdiction of the CA in this present case. Petitioners now move to reconsider and question the Second Division's ruling which provided:

> "….although the right to appeal granted by Art 82 of [EO 226] is a substantive right which cannot be modified by a rule of procedure, nonetheless, questions concerning *where* and *in what manner* the appeal can be brought are only matters of procedure which this Court has the power to regulate."

They contend that Circular No. 1-91 (a rule of procedure) cannot be deemed to have superseded Art 82 of EO 226 (a legislation).[218]

Issue. Does the CA have appellate jurisdiction over decisions from the BOI?

Held. Yes. EO 226 was promulgated after the 1987 Constitution took effect (Feb 2, 1987). Thus, Art 82 of EO 226, which provides for increasing the appellate jurisdiction of the SC, is invalid and therefore never became effective for the concurrence of the Court was not sought in its enactment.[219] Thus, the Omnibus Investments Code of 1981 as amended still stands. The exclusive jurisdiction on appeals from decisions of the BOI belongs to the CA.

COMELEC cannot adopt a rule prohibiting the filing of certain pleadings in the regular courts. Rule-making is vested in the SC.

Aruelo, Jr. v. Court of Appeals
GR 107852, 227 SCRA 311 [Oct 20, 1993]

Facts. Alleging Gatchalian—the duly elected Vice Mayor of Balagtas, Bulacan—committed election fraud, his rival, petitioner *Aruelo*, filed an election protest with the RTC. Gatchalian was served summons on June 10, and was directed to answer the petition within 5 days. Instead of submitting his answer, he filed a Motion to Dismiss. On July 10, the RTC denied this motion and ordered him again to file his answer within 5 days. He subsequently filed a Motion for Bill of Particulars which was denied. A copy of the order denying his motion was received by him on Aug 6. On Aug 11, he finally filed his Answer, alleging that it was Aruelo who committed the election fraud. RTC ordered the revision of ballots. Aruelo objected to the revision, praying before the *CA* to restrain the RTC from implementing the order. He claims that Gatchalian's Answer was filed out of time, beyond 5 days from receipt of summons, in violation COMELEC Rules of Procedure; and that the filing of motions to dismiss and for bill of particulars is prohibited by the same, hence it did not suspend the running of the 5-day period within which Gatchalian should have filed his Answer. He contends Gatchalian's Answer should thus be set aside.

Issue. Are the cited COMELEC Rules of Procedure applicable to cases in proceedings in regular courts?

Held. No. The election protest was filed with the RTC, whose proceedings are governed by the Revised Rules of Court.[220] The COMELEC Rules of Procedure in general are not applicable to proceedings before the regular courts. In particular, the COMELEC Rules invoked by petitioner apply only to proceedings brought before COMELEC. Constitutionally speaking, the *COMELEC cannot adopt a rule prohibiting the filing of certain pleadings in the regular courts. The power to promulgate rules concerning pleadings, practice and procedure in all courts is vested on the SC* — Art VIII, Sec 5(5).

Javellana v. DILG
GR 102549, 212 SCRA 475 [Aug 10, 1992]

Facts. An administrative complaint was filed against Atty. *Javellana*, an incumbent member of the City Council, for continuously engaging in the

[217] See Appendix C, p. 176

[218] In the previous ruling, it was held that "the right to appeal from decisions or final orders of the BOI under EO 226 remains and continues to be respected. Circular 1-91 simply transferred the venue of appeals from decisions of this agency (SC) to respondent CA xxx. It did not make an incursion into the substantive right to appeal." (*First Lepanto Ceramics, Inc. vs. CA* [1994])

[219] 1987 Constitution, Art VI, sec 30. "No law shall be passed increasing the appellate jurisdiction of the SC xxx without its advice and concurrence." *N.B.* The 1973 Constitution does not contain a similar provision.

[220] The Revised Rules of Court provide that a party has at least 5 days to file his answer after receipt of the order denying motion for a Bill of Particulars. Gatchalian received the order on Aug 6, which means he was able to file his answer on time on Aug 11 (5 days after).

practice of law without securing authority for that purpose from the *Department of Interior and Local Government* (DILG), as required by DILG MC 80-38. Later, DILG MC 90-81 was promulgated setting forth guidelines for the practice of professions by local elective officials.[221] On hearing, Javellana filed this petition praying the foregoing circulars be declared null and void for, among others, trenching upon the SC's power and authority to prescribe rules on the practice of law, in violation of *Art VIII, Sec 5(5)* of the Constitution.

Issue. Do the subject circulars trench upon the SC's rule-making power on the practice of law?

Held. No. The subject circulars simply prescribe rules of conduct for public officials to avoid conflicts of interest between the discharge of their public duties and the private practice of their profession in those instances where the law allows it. Petition denied.

Administrative Supervision of Courts.

The power of administrative supervision of the SC over all courts and its personnel is EXCLUSIVE. Thus, a criminal case against a judge may NOT proceed independently of the administrative case arising from the same cause.

Maceda v. Vasquez

GR 102781, 221 SCRA 464 [Apr 22, 1993]

Facts. A complaint was filed before the Office of the Ombudsman against Judge *Maceda* of the RTC for allegedly falsifying his Certificate of Service. He moves to have his case referred to the SC. He contends, among others, the Ombudsman has no jurisdiction over his case and investigation of the Ombudsman constitutes an encroachment into the SC's constitutional duty of supervision over all inferior courts.

Issue. Does the Office of the Ombudsman have authority to investigate a criminal complaint against a judge for alleged falsification of Certification of Service in the absence of an administrative action?

Held. No. In the absence of any administrative action taken against Maceda by this Court with regard to his certificates of service, the investigation being conducted by the Ombudsman encroaches into the Court's power of administrative supervision over all courts and its personnel, in violation of the doctrine of separation of powers. The *Constitution exclusively vests in the SC administrative supervision over all courts and court personnel*, from the Presiding Justice of the CA down to the lowest MTC clerk. It is only the SC that can oversee the judges' and court personnel's compliance with all laws, and take proper administrative action against them if they commit any violation. *No other branch of the govt may intrude*. Thus, where a criminal complaint against a judge or other court employee arises from their administrative duties, the Ombudsman must defer action on said complaint and refer the same to this Court for determination whether said judge or court employee had acted within the scope of their administrative duties. In the case at bar, the Ombudsman should first refer the matter of Maceda's certificates of service to this Court.

Quantum of evidence required to remove a judicial officer is evidence beyond reasonable doubt although such cases are administrative.

Raquiza v. Castañeda, Jr.

AM No. 1312-CFI, 81 SCRA 235 [Jan 31, 1978]

Facts. CFI Judge *Castañeda* was the presiding judge of the special proceedings of the Testate Estate of Don Alfonso Castellvi. Four counts of administrative charges were filed against him: violation of the Anti-graft Law, rendering decision knowing it to be unjust and illegal, extortion by means of oppression, and bribery. The case was referred by this Court to Justice Bautista of the CA for investigation. After duly hearing the parties, Bautista recommended the charges against Castañeda be dismissed for lack of merit. Complainant's evidence was found to be wanting.

Issue. May a judge be removed from office without established ground beyond reasonable doubt?

Held. No. The Court found that the conclusions of fact and recommendations of Investigator Justice Bautista in his report to be well taken and fully

[221] MC 90-81 provides, in part, that to practice profession during incumbency, permission must be obtained from the Secretary of the DILG; there must be no conflict of interests between practice of profession and the official duties of the concerned official; Sanggunian members may practice their professions except during session hours and that they may not appear as counsel in any civil case wherein a local govt office is the adverse party, etc.

supported by the evidence on record. *"The ground for the removal of a judicial officer should be established beyond reasonable doubt".* The rules, *even in an administrative case,* demands that if a judge should be disciplined for grave misconduct or any grave offense, the evidence presented against him should be competent and derived from direct knowledge, and that before a judge could be faulted, it should be only after due investigation and based on competent proofs, no less.

QUALIFICATIONS of Members of the Judiciary
Art VIII, Sec 7.

Kilosbayan v. Ermita
GR 177721 [July 3, 2007]

Facts. Respondent *Ong* was announced by Malacañang to be the one to fill the forthcoming vacancy in the SC to be created by the retirement of J. Callejo, Sr. Petitioners contest the constitutionality of the appointment claiming that Ong is either a Chinese citizen or a naturalized Filipino citizen. Either way, Ong is not a natural-born citizen,[222] making him unqualified for the position of Associate Justice of the SC. (*Art VIII, Sec 7(1)*)

Ong's birth certificate states that he was a Chinese citizen at birth, born to parents who were both Chinese citizens. However, the records show that in Ong's petition to be admitted to the Philippine Bar in 1979, he alleged that he is a Filipino citizen because his father was naturalized in 1964 when he was only 11 years old, a minor. Therefore, he too thereby became a Filipino citizen. On this basis, the Court allowed him to take an oath as a lawyer.

In 1996, Ong was issued a new Identification Certificate by the Bureau of Immigration stating that he is a natural-born Filipino. This was affirmed by the DOJ.

Issue. Is Ong a natural-born Filipino citizen?

Held. No. Clearly, Ong is a naturalized Filipino citizen. The alleged subsequent recognition of his natural-born status by the Bureau of Immigration and the DOJ cannot amend the final decision of the court stating that Ong was naturalized along with his father.[223]

SALARIES OF JUDGES
Art VIII, Sec 10.

Payment of income tax by judges does not fall within the constitutional protection against decrease of their salaries.

Nitafan v. CIR
No. L-78780, 152 SCRA 284 [Jul 23, 1987]

Facts. Judge *Nitafan* et al. seek to prohibit the *Commissioner of Internal Revenue* (CIR) from making any deduction of withholding taxes from their salaries. They argue that any tax withheld from their compensation as judicial officers constitutes a decrease of their salaries contrary to the provision of *Art VIII, sec 10* of the Constitution. It is contended that since a provision in the 1973 Constitution which read "no salary xxx of any public officer xxx shall be exempt from payment of income tax"[224] no longer appears in the 1987 Constitution, the intent of the framers is to revert to the original concept of "non-diminution" of salaries of judicial officers.

[222] Art IV, Sec 2 of the Constitution defines "*natural-born citizens* as those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship"

[223] Contrary to the records at hand, Ong asserted that his mother was a Filipino citizen when he was born (so he is a natural-born citizen). According to Ong, his grandfather was Chinese at birth but was naturalized along with his great grandmother when his grandfather was still a minor. His mother was thus born to a Filipino father, making her Filipino at birth. Though his mother became Chinese when she married his father, Ong asserts that his mother was a Filipino citizen when he was born.

Notably, the Court did not seem to rule with finality the fact of Ong's citizenship—whether or not he is a natural-born Filipino. He was merely enjoined to accept an appointment for the position of Associate Justice of the SC until he has successfully shown, through the appropriate adversarial proceedings in court, that he is a natural-born Filipino, and corrected the records of his birth and citizenship.

[224] 1973 Constitution, Art XV, sec 6

Issue. Are members of the Judiciary exempt from payment of income tax by virtue of their constitutional protection against decrease of their salaries?

Held. No. The deliberations in the 1986 Constitutional Commission reveal that the clear intent of the framers was to delete the proposed express grant of exemption from payment of income tax to members of the Judiciary,[225] so as to "give substance to equality among the 3 branches of the govt". It was made clear that the salaries of members of the Judiciary would be subject to income tax applied to all taxpayers.[226] *The payment of such income tax by Justices and Judges does not fall within the constitutional protection against decrease of their salaries* during their continuance in office.

TENURE OF JUDGES
Art VIII, Sec 11.

The express grant of security of tenure of judges MUST OVERRIDE the implied authority of Congress to remove judges by abolition of office through legislation — J. Teehankee in lone dissenting opinion.

De La Llana v. Alba
No. L-57883, 112 SCRA 294 [Mar 12, 1982]

Facts. Judge *De La Llana* et al. challenge the constitutionality of BP 129 entitled "An Act Reorganizing the Judiciary…". The Act in effect would cause the abolition of 1,663 judicial positions in the inferior courts (except the Sandiganbayan and Court of Tax Appeals), terminating the incumbency of just as much Justices and judges. It is argued that the legislation impairs the independence of the Judiciary as protected and safeguarded by the [now *Art VIII, Sec 11* of the Constitution].

Issue. Was the "security of tenure" provision of the Constitution disregarded by BP 129 thereby impairing the independence of the Judiciary?

Held. No. The Court ruled that the abolition of an office within the competence of a legitimate body[227] if done in good faith suffers no infirmity. No removal or separation of petitioners from the service is here involved. Valid abolition of offices is neither removal or separation of the incumbents. Removal is to be distinguished from termination by virtue of the abolition of the office. There can be no tenure to a non-existent office. After the abolition, there is in law no occupant. In case of removal, there is an office with an occupant who would thereby lose his position. It is in that sense that the question of any impairment of security of tenure does not arise. The Court voted 13-1.[228]

The first clause of Sec 11, Art VIII only declares a grant of power to the SC to discipline judges. It does NOT mean ONLY the full Court can discipline judges. Divisions thereof CAN too.

People v. Gacott, Jr.
GR 116049, 246 SCRA 52 [Jul 13, 1995]

[225] The original draft read: "The salary of the CJ… During their continuance in office xxx shall not be diminished nor *subjected to income tax.* xxx"

[226] The deliberations reveal that the proposed amendment which was accepted was: "The salary of the [judicial officers]… During their continuance in office xxx shall not be diminished but *may be subject to general income tax.*" It was just later agreed to replace "diminished" with "decreased" and cut the sentence short thereafter on the understanding that a similar provision as in Art XV, sec 6 of the 1973 Constitution would be included in the present Constitution.

[227] Established by Art X, Sec 1, 1973 Constitution: "xxx The Batasang Pambansa shall have the power to define, prescribe, and apportion the jurisdiction of the various courts xxx"

[228] Lone dissenting opinion by *J.* Teehankee: I do not subscribe to the test of good faith or bad faith in the abolition of the courts and consequent ouster of the incumbents. Good faith in the enactment of law is presumed. What must be reconciled here is the legislative power to abolish courts as implied from the power to establish them with the express constitutional guaranty of tenure of judges which is essential for a free and independent judiciary. The latter must override the former. This reasoning is placed beyond doubt by the new provisions of the 1973 Constitution that transferred the administrative supervision over all courts xxx from the Chief Executive to the SC and vested in the SC exclusively "the power to discipline judges of inferior courts and xxx order their dismissal". The security of judges' tenure provision was intended to "help secure the independence of the judiciary". The abolition of their offices was merely an indirect manner of removing these petitioners. (*De La Llana v. Alba*, 112 SCRA 294, 387-402)

Facts. The Second Division of the SC resolved to reprimand Judge *Gacott* of the RTC and fine him with P10,000 for gross ignorance of the law. In this motion for reconsideration, he questions the competence of the Second Division to administratively discipline him. He claims that the clause "The SC *en banc* shall have the power to discipline judges xxx or order their dismissal xxx" of Sec 11, Art VIII of the Constitution means that only the *full* Court, not a division thereof, can administratively punish him.

Issue. Is it only the Court sitting *en banc* that can administratively discipline judges?

Held. No. There are two situations envisaged in *Art VIII, Sec 11*. The *first* clause which states that "the SC *en banc* shall have the power to discipline judges of lower courts" is a declaration of the grant of that disciplinary power to, and a determination of the procedure in the exercise thereof by, the Court *en banc*. It was not therein intended that all administrative disciplinary cases should be heard and decided by the Court *en banc* since it would result in an absurdity. To require the entire Court to participate in all administrative cases would result in a congested docket and undue delay in the adjudication of cases in the Court. This would subvert the constitutional injunction for the Court to adopt a systematic plan to expedite decisions/resolutions and the very purpose of authorizing the Court to sit *en banc* or in divisions. The *second* clause declares that the Court *en banc* can "order the dismissal by a vote of majority of the Members who actually took part in the deliberations xxx and voted thereon". Evidently, in this instance, the administrative case must be deliberated upon and decided by the full Court itself. Nonetheless, it is only when the penalty imposed does not exceed suspension of one year or a fine of P10,000 or both that the administrative matter may be decided in division.[229]

SAFEGUARD TO JUDICIAL INDEPENDENCE
Art VIII, Sec 12.

[229] Court *en banc* resolution: Bar Matter No. 209

There is NO exception to the norm set forth in Sec 12, Art VIII if a judge is to be expected to be confined to the task of adjudication.

In Re: Manzano
AM No. 88-7-1861-RTC, 166 SCRA 246 [Oct 5, 1988]

Facts. RTC Exec. Judge *Manzano*, was designated as a member of the Ilocos Norte Provincial Committee on Justice pursuant to EO 856 as amended by EO 326. On examination of foregoing presidential issuances, it was revealed that among the functions of the Committee is to receive complaints against any apprehending officer xxx who may be found to have committed abuses in the discharge of his duties and to refer the same to proper authority for appropriate action. Another function is to recommend revision of any law or regulation which is believed prejudicial to the proper administration of criminal justice. Furthermore, the Committee was to be under the supervision of the Secretary of Justice.

Issue. May Judge Manzano accept his appointment without violating *Art VIII, Sec 12* of the Constitution?

Held. No. It is evident from the herein stated functions of the Committee that it performs *administrative* functions, which are defined as those which involve the regulation and control over the conduct and affairs of individuals for their own welfare and the promulgation of rules and regulations to better carry out the policy of the legislature xxx. While the doctrine of separation of powers is xxx not to be enforced with pedantic rigor, xxx it cannot justify a member of the judiciary being required to assume a position xxx non-judicial in character. *It is indispensable that there can be no exception to the rigidity of such a norm if he is to be expected to be confined to the task of adjudication*. xxx He is not a subordinate of an executive or legislative official. Request to be authorized to accept the appointment denied.

DECISIONS OF THE COURT
Art VIII, Sec 14.

Due process requires that the factual and legal reasons that led to the conclusions of the court appear in the decision.

Nicos Industrial Corp., et al. v. Court of Appeals, et al.
GR 88709, 206 SCRA 127 [Feb 11, 1992]

Facts. Petitioner *NICOS Industrial Corporation* obtained a loan from private respondent United Coconut Planters Bank (UCPB) secured by a real mortgage. The mortgage was foreclosed for the non-payment of the loan. In the sheriff's auction sale, UCPB was the highest and lone bidder and the real estate was sold to it. Petitioners NICOS et al. sought to annul the auction sale. Respondents moved to dismiss the complaint. Petitioners presented witnesses and submitted 21 exhibits. Respondents filed a 7-page demurrer to the evidence to which the petitioners did not oppose. Whereupon, an Order was issued:

> O R D E R
>
> Acting on the "Demurrer to Evidence" xxx filed by defendants [respondents] to which plaintiff [petitioners] xxx did not file their comment/opposition and it appearing from the very evidence adduced by the plaintiff that the Sheriff's Auction Sale xxx was in complete accord with the requirements [set by law] under which the auction sale was appropriately held and conducted and it appearing from the allegations in xxx the plaintiff's pleading and likewise from plaintiff Coquinco's own testimony that his cause is actually-against the other officers and stockholders of the plaintiff Nicos xxx". . . for the purpose of protecting the corporation and its stockholders, as well as their own rights and interests in the corporation, and the corporate assets, against the fraudulent ants and devices of the responsible officials of the corporation, in breach of the trust reposed upon them by the stockholders . . ." a subject matter not within the competent jurisdiction of the Court, the court finds the same to be impressed with merit.
>
> WHEREFORE, plaintiff's complaint is hereby dismissed. The Defendants' respective counterclaims are likewise dismissed.
>
> The Writ of Preliminary Injunction heretofore issued is dissolved and set aside.

Petitioners now assail the constitutionality of the Order, claiming that it does not "clearly and distinctly" explain how it was reached as mandated by Art. VIII, Sec 14 of the Constitution. They contend that there was not even analysis of their testimonial evidence or of their 21 exhibits.

Issue. Does the Order violate Art VIII Sec 14 of the Constitution?

Held. Yes. The Order is an oversimplification of the issues. *It is a requirement of due process that the parties to litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court*. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.[230]

There is no rigid formula as to the language to be employed to satisfy the requirement of clarity and distinctness only that the decision rendered must make it clear why either party prevailed under the applicable law to the facts as established.

Mendoza v. Court of First Instance of Quezon
Nos. L-35612-14, 51 SCRA 369 [Jun 27, 1973]

Facts. *Mendoza* filed petitions for *habeas corpus, certiorari* and *mandamus*, but the court issued a resolution dismissing said petitions for lack of merit. According to the court, the Mendoza failed to discharge the burden of showing that his confinement was marked by illegality or that the order cancelling the bail previously issued was tainted with grave abuse of

[230] The Court noted that *Art VIII, Sec 14 of the Constitution does not apply to interlocutory orders* (such as one granting a motion for postponement or quashing a subpoena) because *it "refers only to decisions on the merits and not to orders of the trial court resolving incidental matters"*. However, it is settled that an order dismissing a case for insufficient evidence (as in this case) is a judgment on the merits. It was also noted that the *rule that dismissal based on lack of jurisdiction is not considered a judgment on the merits would be applicable only if the case is dismissed on the sole ground of lack of jurisdiction and not when some other additional ground is invoked*. In this case, the Order reveals that the complaint was dismissed not only for lack of jurisdiction but also for insufficiency of evidence. (*Nicos Industrial Corp. v. CA*, 206 SCRA 127)

discretion. Mendoza then filed for a motion for reconsideration objecting to, among others, the dismissal of the petition through a *minute resolution*. It is his contention that there should be an extended decision in consonance with the [now Art VIII, Sec 14] of the Constitution.

Issue. Does the issuance of a brief dismissal order violate Art VIII, Sec 14 of the Constitution?

Held. No. *What is required "is that the decision rendered makes clear why either party prevailed under the applicable law to the facts* as established. xxx [There is no] rigid formula as to the language to be employed to satisfy the requirement of clarity and distinctness. xxx" What must then be stressed is that under the [now *Sec 14, Art VIII*], the "decision" spoken of is the judgment rendered after the previous presentation of the proof in an ordinary civil or criminal case upon a stipulation of facts upon which its disposition is to be based. *It refers only to decisions of the merits*, and not to orders of the trial court resolving incidental matters such as the one at bar.

The Court is not "duty bound [by virtue of Art VIII, Sec 14]" to render signed Decisions all the time. It may dispose of cases by Minute Resolutions provided legal basis is given.

Resolutions are not "decisions" within the constitutional requirement [in Art VIII, Sec 14 par 1]. Resolutions disposing of petitions fall under the constitutional provision [in Sec Art VIII, Sec 14 par 2].

Borromeo v. Court of Appeals
GR 82273, 186 SCRA 1 [Jun 1, 1990]

Facts. *Borromeo* charged the two court officials with usurpation of judicial functions, for allegedly "maliciously and deviously issuing biased, fake, baseless and unconstitutional 'Resolution' and 'Entry of Judgment' in G.R. No. 82273." However, this is not the first time that Borromeo has filed charges/complaints against officials of the Court. In several letter-complaints, he repeatedly claimed that he "suffered injustices" because of the disposition of the 4 cases he separately appealed to this Court which were resolved by minute resolutions, allegedly in violation of Sec 14, Art VIII of the Constitution, among others. His invariable complaint is that the resolutions xxx do not bear the signatures of the Justices who participated in the deliberations and resolutions xxx. He likewise complains that the resolutions bear no certification of the Chief Justice and that they did not state the facts and the law on which they were based and were signed only by the Clerks of Court.

Issue. Does the issuance of the minute resolution violate Art VIII, Sec 14 of the Constitution?

Held. No. The *Court is not "duty bound [by virtue of Art VIII, Sec 14]" to render signed Decisions all the time. It has ample discretion to formulate Decisions and/or Minute Resolutions, provided a legal basis is given,* depending on its evaluation. This is the only way whereby it can act on all cases filed before it and, accordingly, discharge its constitutional functions.[231]

The constitutional requirement that a decision must express clearly and distinctly the facts and law on which it is based [in Sec Art VIII, Sec 14 par 1] refers only to decisions. Resolutions disposing of petitions fall under the constitutional provision [in Sec Art VIII, Sec 14 par 2].

When the Court, after deliberating on a petition xxx decides to deny due course to the petition and states that the questions raised are factual or no reversible error in the respondent court's decision is shown or for some other legal basis stated in the resolution, there is sufficient compliance with the constitutional requirement in Art VIII, Sec 14 [par 2].

In the case at bar, the subject minute resolution is a 4-page resolution which more than adequately complies with the constitutional requirements governing resolutions refusing to give due course to petitions for review. The petition and its incidents were discussed and deliberated upon by the Justices of the 3rd Division.

[231] The Court disposes of the bulk of its cases by minute resolutions and decrees them as final and executory, as where a case is patently without merit, where the issues raised are factual in nature, where the decision appealed from is supported by substantial evidence and is in accord with the facts of the case and the applicable laws, where it is clear from the records that the petition is filed merely to forestall the early execution of judgment and for non-compliance with the rules. (*Borromeo v. CA*, 186 SCRA 1)

Grant of due course to a petition for review is not a matter of right, but of sound judicial discretion; and so there is no need to fully explain the Court's denial [through a minute resolution]

Komatsu Industries (Phils), Inc. v. Court of Appeals
GR 127682, 289 SCRA 604 [Apr 24, 2008]

Facts. A real property of petitioner *Komatsu Industries (Phils), Inc.* (KIPI) was extra-judicially foreclosed. KIPI sought to declare the foreclosure null and void. It obtained favorable judgment from the trial court but was reversed by the CA. KIPI filed a petition for review on *certiorari* with the SC. SC resolved to deny the petition for failure to sufficiently show that the CA had committed any reversible error in its questioned judgment. KIPI moved for reconsideration. Since no additional and substantial arguments were adduced to warrant the reconsideration sought, the SC resolved to deny the motion. In the instant second motion for reconsideration, KIPI argues that the "minute resolutions" are violative of Sec 14, Art VIII of the Constitution.

Issue. Are minute resolutions violative of Art VIII, Sec 14 of the Constitution?

Held. No. The Court has discretion to decide whether a "minute resolution" should be used in lieu of a full-blown decision in any particular case. A minute resolution of dismissal of a petition for review on certiorari constitutes an adjudication on the merits of the controversy or subject matter. The *grant of due course to a petition for review is not a matter of right, but of sound judicial discretion; and so there is no need to fully explain the Court's denial.* For one thing, the facts and law are already mentioned in the CA's opinion. *A minute resolution denying a petition for review of a decision of the CA can only mean that the SC agrees with or adopts the findings and conclusions of the CA*, in other words that the decision sought to be reviewed and set aside is correct.

This Court is thus fully justified in handing down its minute resolutions in this case because it "agrees with or adopts the findings and conclusions of the CA" since "the decision sought to be reviewed and set aside is correct."

The certification requirement [that the conclusions of the SC was reached in consultation] and the mandate that no motion for reconsideration shall be denied without stating legal basis therefor are both NOT applicable in administrative cases — Art VIII, Sec 13 and 14.

Prudential Bank v. Castro
AM No. 2756, 158 SCRA 646 [Mar 15, 1988]

Facts. An administrative complaint was filed against respondent Atty. Grecia, and a Decision to disbar him was subsequently rendered. He moved to reconsider but was denied in a Minute Resolution "for lack of merit, the issues raised therein having been previously duly considered and passed upon." Grecia now prays that the Decision and the Resolution of the denial of the motion for reconsideration be set aside. He challenges the Decision as violative of Art VIII, Sec 13 of the Constitution due to lack of certification by the Chief Justice that the conclusions of the Court were reached in consultation before the case was assigned to a member for writing of the opinion of the Court. He also avers that the Minute Resolution disregarded the constitutional mandate in Art VIII, Sec 14.

Issues.

(1) Is the certification requirement in Art VIII, Sec 13 of the Constitution applicable to the case at bar, an administrative case?

(2) Did the denial of the motion for reconsideration by minute resolution violate Art VIII, Sec 14 of the Constitution?

Held.

(1) No. The certification requirement refers to decisions in judicial, not administrative cases. From the very beginning, resolutions/decisions of the Court in administrative cases have not been accompanied by any formal certification. In fact, such a certification would be a superfluity in administrative cases, which by their very nature, have to be deliberated upon considering the collegiate composition of this Court. xxx

(2) No. The Constitutional mandate that "no xxx motion for reconsideration of a decision of the court shall be xxx denied without stating the legal basis therefor" is inapplicable in administrative cases. And even if it were applicable, said Resolution stated the legal basis for the denial, and therefore adhered faithfully to the Constitutional requirement. "Lack of merit" which was one of the grounds for denial, is a legal basis.

Art VIII, Sec 14 par 1 does not preclude the validity of memorandum decisions.

Oil and Natural Gas Commission v. Court of Appeals
GR 114323, 293 SCRA 26 [Jul 23, 1998]

Facts. Petitioner is a foreign corporation owned and controlled by the Government of India while private respondent is a private corporation duly organized and existing under the laws of the Phils. Petitioner and private respondent entered into a contract whereby private respondent undertook to supply the petitioner oil well cement for a consideration. Due to some dispute over the specifications of the oil cement, petitioner, in accordance with the terms of their contract, referred its claim to an arbitrator in Dehra Dun, India who resolved the dispute in petitioner's favor. To execute the award, petitioner applied therefor before the Court of the Civil Judge in Dehra Dun, India. *The foreign court then issued an Order making the award of the arbitrator the "Rule of the Court."*[232] Private respondents refused to comply with the Order so Petitioner filed a complaint before the RTC of Surigao City, Philippines to enforce the claim. The RTC dismissed the complaint for lack of a valid cause of action, characterizing the submission of the dispute to the arbitrator as a "mistake of law or fact amounting to want of jurisdiction." It held that consequently the proceedings before the arbitrator were null and void and the foreign court had therefore, adopted no legal award which could be the source of an enforceable right. On appeal, the CA concurred with the RTC and, in addition, observed that the full text of the judgment of the foreign court contains the dispositive portion only and indicates no findings of fact and law as basis for the award. It is thus, unenforceable in the Phils. as to enforce it is to violate the constitutional provision that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

Issues.

(1) Is the foreign court judgment valid in the Philippines?
(2) Is the foreign court judgment enforceable in the Philippines?

Held.

(1) Yes. Matters of remedy and procedure are governed by the *lex fori* or the internal law of the forum. Thus, if under the procedural rules of the Civil Court of Dehra Dun, India, a valid judgment may be rendered [in a manner averse to the procedural rules in this jurisdiction] xxx, then the same must be accorded respect. The courts in this jurisdiction cannot invalidate the order of the foreign court simply because our rules provide otherwise.
(2) Yes. *The constitutional mandate [in Art VIII, Sec 1 par 1] does not preclude the validity of "memorandum decisions"* which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals. xxx Incorporation by reference is allowed if only to avoid the cumbersome reproduction of the decision of the lower courts xxx in the decision of the higher court. In the case at bar, the Order of the Civil Judge of Dehra Dun categorically declared that it adopted [and thus incorporated in its own judgment] the findings of facts and law of the arbitrator as contained in the latter's Award Paper which details an exhaustive discussion of the respective claims and defenses of the parties, and the arbitrator's evaluation of the same. The CA was thus in error when it held the foreign judgment to be "simplistic xxx containing literally only the dispositive portion".

A mere conclusion of facts and of law arrived at without stating the facts which serve as the basis thereof is not what is a clear and distinct statement of facts.

Valdez v. Court of Appeals
GR 85082, 194 SCRA 360 [Feb 25, 1991]

Facts. In a civil action filed before the RTC against Viernes and Sps. Ante, the court rendered a Decision in favor of Sps. Valdez. Not satisfied therewith, Sps. Valdez appealed but the CA affirmed the trial court's decision *in toto*. Hence this petition for *certiorari*. The RTC Decision is three pages long. The first two pages contained a statement of the allegations of the pleadings of the parties, an enumeration of the witnesses presented and the exhibits marked during the trial. Thereafter, the RTC arrived at the following conclusion:

[232] Analogous to a memorandum decision

> "After considering the evidence on record, this Court finds that plaintiff [Sps. Valdez] have failed to prove their case as against defendant Viernes, but proved their case against defaulted defendants Antes. The Court finds that there is no sufficient proof of knowledge or bad faith on the part of defendant Viernes, and on the basis of existing jurisprudence, a third person who in good faith purchases and registers a property cannot be deprived of his title as against plaintiff who had previously purchased same property but failed to register the same."

Issue. Does the three-page Decision of the trial court satisfy Art VIII, Sec 14 par 1 of the Constitution?

Held. No. A mere conclusion of facts and of law arrived at by the trial court without stating the facts which serve as the basis thereof is not what is contemplated in the Constitution as a clear and distinct statement of facts on the basis of which the decision is rendered. xxx The court statement in the decision that a party has proven his case while the other has not, is not the findings of facts contemplated by the Constitution to be clearly and distinctly stated.

ARTICLE IX. CONSTITUTIONAL COMMISSIONS

COMMON PROVISIONS

RULE-MAKING POWER
Art IX-A, Sec 6.

Constitutionally speaking, the COMELEC cannot adopt a rule prohibiting the filing of certain pleadings in the regular courts.

Aruelo v. Court of Appeals
GR 107852, 227 SCRA 311 [Oct 20, 1993]

Facts. Petitioner *Aruelo* and private respondent Gatchalian were rival candidates in the 11 May 1992 elections for the office of the Vice-Mayor of Balagtas, Bulacan. Gatchalian won by a margin of four votes. Consequently, Aruelo filed an election protest with the Regional Trial Court (RTC). Gatchalian was served an amended summons on 10 Jun 1992, and was directed to Answer the petition within 5 days. Instead of submitting his Answer, Gatchalian filed a Motion to Dismiss. On 10 Jul 1992, the RTC denied this motion and ordered him again to file his Answer within 5 days. He subsequently filed a Motion for Bill of Particulars which was also denied–a copy of which was received by him on 6 Aug 1998. On 11 Aug 1992, he finally filed his Answer, alleging that it was Aruelo who committed the election fraud. RTC admitted Gatchalian's Answer and ordered the revision of ballots. Aruelo objected to the revision, praying before the *CA* to restrain the RTC from implementing the order. He claimed that Gatchalian's Answer was not filed on time, beyond 5 days from receipt of summons, in violation of the COMELEC Rules of Procedure which prohibit the filing of motions to dismiss and for bill of particulars; hence it did not suspend the running of the 5-day period within which Gatchalian should have filed his Answer. He thereby contended that Gatchalian's Answer should be set aside.

Issue. Do the COMELEC's Rules of Procedure apply to proceedings before the regular courts?

Held. No.[233] Petitioner filed the election protest with the RTC, whose proceedings are governed by the Revised Rules of Court. Constitutionally speaking, the COMELEC cannot adopt a rule prohibiting the filing of certain pleadings in the regular courts. The power to promulgate rules concerning pleadings, practice and procedure in all courts is vested on the Supreme Court.[234] Gatchalian received a copy of the order of the RTC denying his motion for a bill of particulars on 6 August 1992. Under Section 1 (b), Rule 12 of the Revised Rules of Court, a party has at least five days to file his answer after receipt of the order denying his motion for a bill of particulars. Gatchalian, therefore, had until 11 August 1992 within which to file his answer. The Answer with Counter-Protest and Counterclaim filed by him on 11 August 1992 was filed timely.

PROCEEDINGS
Art IX-A, Sec 7.

A 2-1 decision rendered by the First Division of COMELEC is a valid decision under Article IX-A, Section 7 of the Constitution.

Cua v. COMELEC
GR 80519, 156 SCRA 582 [Dec 17, 1987]

[233] Section 1, Rule 13, Part III of the COMELEC Rules of Procedure is not applicable to proceedings before the regular courts. As expressly mandated by Section 2, Rule 1, Part I of the COMELEC Rules of Procedure, the filing of motions to dismiss and bill of particulars, shall apply only to proceedings brought before the COMELEC. These rules, except Part VI, shall apply to all actions and proceedings brought before the Commission. Part VI shall apply to election contests and *quo warranto* cases cognizable by courts of general or limited jurisdiction. It must be noted that nowhere in Part VI of the COMELEC Rules of Procedure is it provided that motions to dismiss and bill of particulars are not allowed in election protests or *quo warranto* cases pending before the regular courts.

[234] Constitution, Art VIII, Sec. 5(5).

Facts. *COMELEC* rendered a 2-1 decision on 10 August 1987, favoring petitioner *Cua* but nevertheless suspended his proclamation as winner in the lone congressional district of Quirino due to the lack of the unanimous vote required by the procedural rules in COMELEC Resolution No. 1669.[235] Pursuant to said rules, private respondent Puzon filed a "motion for reconsideration/appeal" of the said decision with the COMELEC *en banc*, where three members voted to sustain the First Division, with two dissenting and one abstaining. On the strength of this 3-2 vote, Cua moved for his proclamation by the board of canvassers, which granted his motion. Thereafter, Cua took his oath, but the next day Puzon filed with the COMELEC an urgent motion to suspend Cua's proclamation or to annul or suspend its effect if already made. Thereafter, the COMELEC issued a restraining telegram enjoining Cua from assuming the office of member of the House of Representatives.

Issue. Is the 2-1 decision of the COMELEC's First Division a valid decision despite COMELEC Resolution No. 1669.

Held. Yes. A 2-1 decision rendered by the First Division is a valid decision under Article IX-A, Section 7 of the Constitution.[236] The decision should be sustained in order to protect [*sic*] xxx a considerable number of xxx people who remain unrepresented xxx in the House of Representatives xxx. Furthermore, the three members who voted to affirm the First Division constituted a majority of the five members who deliberated and voted thereon *en banc* and their decision is also valid under the aforecited constitutional provision. Hence, the proclamation of Cua on the basis of the two aforecited decisions was a valid act that entitles him now to assume his seat in the House of Representatives.

Acena v. Civil Service Commission

GR 90780, 193 SCRA 623 [Feb 6, 1991]

Facts. Petitioner *Acena* was appointed by Dr. Lydia Profeta, then President of Rizal Technological Colleges (RTC), as an Administrative Officer. A promotional appointment as an Associate Professor was later extended to him. He was also designated as Acting Administrative Officer. Subsequently, private respondent Dr. Josefina V. Estolas was appointed as RTC's Officer-in-Charge. Estolas revoked the designation of petitioner Acena as Acting Administrative Officer and replaced him with private respondent Ricardo Salvador. Acena filed a complaint with the Merit Systems Protection Board (MSPB) against Estolas for illegal termination. He claimed that he remains as Administrative Officer as his appointment as Associate Professor is only temporary until such time that he xxx obtains a master's degree. His appointment as Associate Professor was later withdrawn by Profeta. Despite the filing of the injunction case and the pendency of the case before the MSPB, Acena sought the opinion of the *Civil Service Commission* (CSC) Chairman Gotladera who opined in a letter addressed to Estolas that petitioner Acena is still the Administrative Officer of RTC because his appointment as an Asssociate Professor had been withdrawn. In its 3 Feb 1988 order, the MSPB dismissed petitioner Acena's complaint for illegal termination. However, on 23 Mar 1988, acting on Acena's letter informing the MSPB of the opinion of CSC Chairman Gotladera, the MSPB reversed itself and set aside its order dismissing the petitioner. On 16 Jul 1988, Estolas and Salvador filed a petition for review with the Office of the President. The Office of the President referred the same to CSC. Thereafter, CSC decided that the termination of Acena was legal.

Issue. Did CSC acted without or in excess of jurisdiction or with grave abuse of discretion when it set aside the order dated 23 March 1988 of the MSPB?

Held. Yes. It is an admitted fact by no less than the public respondent CSC that private respondent Estolas's petition for review filed on 16 June 1988 with the Office of the President was filed out of the reglementary period and with the wrong forum. The decision of the MSPB is appealable to the CSC within fifteen (15) days from receipt of the copy thereof. Perfection of the appeal within the prescribed period is jurisdictional so that the failure to perfect an appeal within the reglementary period has the effect of rendering the judgment final and executory.[237]

[235] Sec. 5. *Quorum*: *votes required*; *substitution*. Two members shall constitute a quorum for the transaction of the official business of the Division. A case being heard by it shall be decided with the unanimous concurrence of all three Commissioners and its decision shall be considered a decision of the Commission. If this required number is not obtained, *as when there* is a dissenting opinion, the case may be appealed to the Commission en banc, in which case the vote of the majority thereof shall be the decision of the Commission.

[236] *Supra*.

[237] CSC Resolution No. 81-1329, Sec. 7. Cases appealable to the Commission. Decision of the Merits Systems Board on contested appointments and other non-disciplinary cases are

"The Civil Service Commission has" (sic) *the power or authority to enforce or order execution of its decisions, resolutions or orders*.

Vital-Gozon v. Court of Appeals
GR 101428, 212 SCRA 623 [Aug 5, 1992]

Facts. In the reorganization of various offices of the Ministry of Health during the Aquino administration pursuant to EO 119, existing offices were abolished. Consequently, Dr. de la Fuente who was then Chief of the Clinics of the National Children's Hospital (NCH) received notice from the Dept. of Health (DOH) that he was reappointed to Medical Specialist II. Considering the reappointment as a demotion by no less than 2 ranks, Dr. de la Fuente protested. The Civil Service Commission (CSC) ruled in his favor, declaring his demotion as null and void and illegal since NCH was not abolished and the position therein remained intact although the title or the position of Chief of Clinics was changed to "Chief of Medical Professional Staff" with substantially the same functions and responsibilities. Dr. De la Fuente thereupon sent two (2) letters to petitioner Dr. Vital-*Gozon*, the Medical Center Chief of NCH, demanding the implementation of CSC's decision. Neither Dr. Vital-Gozon and the legal department of the DOH bothered to take steps to comply with the CSC order. Hence, Dr. De la Fuente sought the assistance of the CSC to enforce its judgment. However, CSC averred that it has *no coercive powers* unlike a court *to enforce* its final decisions/resolutions

Issue. Does CSC have coercive powers to enforce its final decision?

Held. Yes. It is absurd to deny to the CSC the power or authority to enforce or order execution of its decisions, resolutions or orders which it has been exercising through the years. It would seem quite obvious that the authority to decide cases is inutile unless accompanied by the authority to see that what has been decided is carried out. Hence, the grant to a tribunal or agency of adjudicatory power, or the authority to hear and adjudge cases, should normally and logically be deemed to include the grant of authority to enforce or execute the judgments it thus renders, unless the law otherwise provides. In any event, the Commission's exercise of that power of execution has been sanctioned by this Court in several cases.

appealable to the Commission by the party adversely affected within fifteen (15) days from receipt of a copy thereof.

Final orders by COMELEC reviewable by the SC by way of certiorari are only those issued pursuant its quasi-judicial functions.

Filipinas Engineering and Machine Shop v. Ferrer
No. L-31455, 135 SCRA 25 [Feb 28, 1985]

Facts. The COMELEC issued an invitation to bid for the submission of proposals for the manufacture and delivery of voting booths for the November 1969 elections. *Filipinas Engineering and Machine Shop* (Filipinas Engg.) was recommended by COMELEC's bidding committee to be awarded the contract on the condition that an ocular inspection of the samples be made before the final award. However, after the ocular inspection and notification by the Commissioners that competing bidder ACME submitted the lowest bid, COMELEC awarded the contract to ACME. Filipinas Engg. filed a complaint which prayed for an injunction before the CFI which dismissed the same. Filipinas Engg. now appeals to this Court by *certiorari* to review said decision.

Issue. Does the Supreme Court have the authority to review the case?

Held. No. The COMELEC resolution awarding the contract in favor of ACME was not issued pursuant to its quasi-judicial functions but merely as an incident of its inherent administrative functions over the conduct of elections[238], and hence, the said resolution may not be deemed as a "final order" reviewable by *certiorari* by the Supreme Court. Being non-judicial in character, no contempt may be imposed by the COMELEC from said order, and any direct and exclusive appeal by certiorari to the SC from such order xxx is improper (*sic*) xxx. Thus, any question arising from said order may be well taken in an ordinary civil action before the trial courts (not the Supreme Court).

[238] The COMELEC has two functions: "(1) the duty to enforce and administer all laws relative to the conduct of elections, and (2) the power to try, hear and decide any controversy that may be submitted to it in connection with the elections." (Filipinas Engg v. Ferrer *citing* Masangcay v. COMELEC, 6 SCRA 27, 2829)

The Civil Service Commission under the Constitution, is the single arbiter of all contests relating to the Civil service and as such, its judgments are unappealable and subject only to the Supreme Court's certiorari judgment.

Mateo v. Court of Appeals
GR 113219, 247 SCRA 284 [Aug 14, 1995]

Facts. Sta. Maria was the General Manager of Morong Water District (MOWAD), a quasi-public corporation. Upon complaint of some of its employees, the Board Members investigated *Sta. Maria* and placed him under preventive suspension. San Diego was designated in his place as Acting General Manager. Sta. Maria was subsequently dismissed. Sta. Maria instituted a Special Civil Action for *Quo Warranto* and *Mandamus* with Preliminary Injunction before the RTC. Petitioner moves to dismiss the case on the ground that the RTC has no jurisdiction over disciplinary actions of government employees which is vested exclusively in the Civil Service Commission.

Issue. Does the RTC have jurisdiction over cases involving the dismissal of an employee of quasi-public corporation?

Held: No. The Civil Service Commission under the Constitution, is the single arbiter of all contests relating to the Civil service and as such, its judgments are unappealable and subject only to Supreme Court's *certiorari* judgment. The hiring and firing of employees of government-owned and controlled corporations, which includes water district corporations, are governed by the provisions of the Civil Service Law and Rules and Regulations.[239] Hence, Regional Trial Courts have no jurisdiction to entertain cases involving dismissal of officers and employees covered by the Civil Service Law.

SC Revised Administrative Circular No. 1-95, May 16, 1995.

[239] PD No. 807, Executive Order No. 292, and Rule II section 1 of Memorandum Circular No. 44 series of 1990 of the Civil Service Commission spell out the initial remedy of private respondent against illegal dismissal. They categorically provide that the party aggrieved by a decision, ruling, order, or action of an agency of the government involving *termination of services* may appeal to the Commission within fifteen (15) days. Thereafter, private respondent could go on *certiorari* to this Court under Rule 65 of the Rules of Court if he still feels aggrieved by the ruling of the Civil Service Commission.

"Appeals from judgments, final orders or resolutions or quasi-judicial agencies, like the Civil Service Commission, shall be taken to the Court of Appeals by way of a petition for review within fifteen (15) days from notice of the assailed judgment, order or resolution"(*Mateo vs. Court of Appeals*, G.R. No. 113219, 14 August 1995, 247 SCRA 284).

CIVIL SERVICE COMMISSION

SCOPE OF THE CIVIL SERVICE COMMISSION
Article IX-B, Sec 2 (1).

The civil service now covers only government owned or controlled corporations with original or legislative charters, that is those created by an act of Congress or by special law, and not those incorporated under and pursuant to a general legislation.

TUPAS v. National Housing Corporation[240]
No. L-49677, 173 SCRA 33 [May 4, 1989]

Facts. The National Housing Corporation (NHC) is a corporation organized in accordance with EO 399 (The Uniform Charter of Government Corporations). It has been 100% owned by the government since its incorporation. Petitioner *Trade Unions of the Philippines and Allied Services* (TUPAS) is a legitimate labor organization with a chapter in NHC. TUPAS filed a petition for the conduct of a certification election with the Department of Labor in order to determine the exclusive bargaining representative of the workers in NHC. The petition was dismissed holding that NHC "being a government-owned and/or controlled corporation its employees/workers are prohibited to form, join or assist any labor organization for purposes of collective bargaining pursuant to xxx the Labor Code." From this order of dismissal, TUPAS appealed to the Bureau of Labor Relations whereupon the order of dismissal was reversed and the

[240] Compare this case with SSS Employees Assoc. v. CA, G.R. No. 85279, 28 Jul 1989, 175 SCRA 686.

holding of a certification election was ordered. This Order was, however, set aside upon a motion for reconsideration of respondent NHC.

Issue. Are the employees of NHC governed by civil service laws?

Held. No.[241] The civil service now covers only government owned or controlled corporations with original or legislative charters, that is, those created by an act of Congress or by special law, and not those incorporated under and pursuant to a general legislation. The Civil Service does not include government-owned or controlled corporations which are organized as subsidiaries of government-owned or controlled corporations under the general corporation law. There is, therefore, no impediment to the holding of a certification election among the workers of NHC for it is clear that they are covered by the Labor Code, the NHC being a government-owned and/or controlled corporation without an original charter.[242]

Officers may not be removed at the mere will of those vested with the power of removal, or without any cause.

De Los Santos v. Mallare

No. L-3881, 97 Phil 289 [Aug 31, 1950]

Facts. Petitioner *de los Santos* was appointed City Engineer of Baguio on 16 Jul 1946, by the President which was confirmed by the Commission on Appointments (CA) on 6 August, and on the 23rd of that month, he qualified for and began to exercise the duties and functions of the position. On 1 Jun 1950, private respondent *Mallare* was extended an *ad interim* appointment by the President to the same position. Thereafter, on 3 June, the Undersecretary of the Department of Public Works and Communications directed de los Santos to report to the Bureau of Public Works for another assignment. De los Santos refused to vacate the office. When the City Mayor, Pantaleon Pimentel, and the other officials ignored him and paid Mallare the salary corresponding to the position, he commenced these proceedings. It was however contended by the respondents that Section 2545 of the Revised Administrative Code, which falls under Chapter 61 entitled "City of Baguio," authorizes the Governor General (now the President) *to remove at pleasure* any of the officers enumerated therein, one of whom is the city engineer.

Issue. Was De Los Santos illegally terminated?

Held. Yes.[243] The Constitution authorizes removals and only requires that they be for a cause. The President's pleasure is not a cause. The phrase "for cause" in connection with the removals of public officers means "for reasons which the law and sound public policy recognized as sufficient warrant for removal, that is, legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient." Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public.[244] Section 2545 of the Revised Administrative Code is thus deemed repealed by the Constitution.

Two instances when a position may be considered "primarily confidential":

(1) When the President upon recommendation of the Commissioner of Civil Service has declared the position to be primarily confidential; or

(2) In the absence of such declaration when by the nature of the functions of the office, there exists "close intimacy between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgiving or betrayals of personal trust or confidential matters of state".

[241] The workers or employees of NHC undoubtedly have the right to form unions or employees' organizations. The right to unionize or to form organizations is now explicitly recognized and granted to employees in both the governmental and the private sectors. The Bill of Rights provides that "the right of the people, including those employed in the public and private sectors, to form unions, associations or societies for purposes not contrary to law shall not be abridged."

[242] Labor Code. Art 244. *Right of employees in the public service.* Employees of the government corporations established under the Corporation Code shall have the right to organize and to bargain collectively with their respective employers. All other employees in the civil service shall have the right to form associations for purposes not contrary to law.

[243] Article XII of the Constitution, Sec 4. No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law.

[244] The office of the City Engineer of Baguio belongs to the unclassified service. It is neither primarily confidential, policy-determining, nor highly technical. Its duties of are eminently administrative in character and can be undertaken by a non-technical men possessing executive abilities.

Salazar v. Mathay[245]

No. L-44061, 73 SCRA 285 [Sept 20, 1976]

Facts. On 20 Jan 20, 1960, petitioner *Salazar* was appointed by the Auditor General "confidential agent" in the Office of the Auditor General, Government Service Insurance System (GSIS) with compensation of P3,120.00 per annum. Said office is primarily confidential in nature pursuant to Executive Order 265.[246] She was extended another appointment by way of promotion, as "confidential agent" in the same office with compensation of P3,300.00 per annum. Her salary as "confidential agent" was subsequently adjusted to P4,200.00 per annum. Again, on 7 Oct 1965, petitioner's salary as "confidential agent" was adjusted to P5,500.00 per annum. On 18 Mar 1966, petitioner received a notice from the Auditor General that her services as "confidential agent" in the Office of the Auditor, GSIS have been terminated as of 31 Mar 1966. On the 31 Mar1966, the Auditor General upon recommendation of Auditor of the GSIS issued an appointment to Salazar as Junior Examiner in his office with a compensation of P2,400.00 per annum, On the same day, Salazar assumed the position of Junior Examiner in the Office of the Auditor, GSIS.

Issue. Was Salazar illegally terminated?

Held. No. Her position being primarily confidential, Salazar cannot complain that in the termination of her services as confidential agent in the Office of the Auditor, GSIS is in violation of her security of tenure. It can be said that Salazar was not removed from her office as confidential agent in the office of the Auditor, GSIS, but that her term in said position has already expired when the appointing power terminated her services. But even granting for the sake of argument that Salazar's position was not primarily confidential, by her acceptance of the position of Junior Examiner in the Office of the Auditor, GSIS, she was deemed to have abandoned her former position of "confidential agent" in the same office. To constitute abandonment, the officer should manifest a clear intention to abandon the office and its duties which may be inferred from his conduct. In the instant case, Salazar accepted unqualifiedly the position of Junior Examiner in the same office.[247]

Since, in the interest of service, reasonable protection should be afforded civil servants in positions that are by their nature important, such as those that are "highly technical," the Constitution at least demands that their dismissal for alleged "loss of confidence" if at all allowed, be attended with prudence and deliberation adequate to show that said ground or cause exists.

Corpus v. Cuaderno[248]

No. L-23721, 913 SCRA 591 [Mar 31, 1965]

Facts. Petitioner *Corpus*, occupying the office of "Special Assistant to the Governor, In Charge of the Export Department" of the Central Bank, a position declared by the President of the Philippines as "highly technical" in nature, was administratively charged with dishonesty, incompetence, neglect of duty, and/or abuse of authority, oppression, conduct unbecoming of a public official, and of violation of the internal regulations of the Central Bank. Subsequently, the Monetary Board suspended the petitioner from performing the duties of his office. An investigating committee was created to investigate the administrative charges against

[245] Compare the nature of office involved in this case with Corpus v. Cuaderno, G.R. No. L-23721, 31 Mar 1965, 913 SCRA 591.

[246] Executive Order No. 265, declares that "... confidential agents in the several department and offices of the Government, unless otherwise directed by the President, to be primarily confidential" brings within the fold of the aforementioned executive order the position of confidential agent in the Office of the Auditor, GSIS, as among those positions which are primarily confidential.

[247] This should not be misunderstood as denying that the incumbent of a primarily confidential position holds office at the pleasure only of the appointing power. It should be noted, however, that when such pleasure turns into displeasure, the incumbent is not "removed" or dismissed" from office his "term" merely "expires," in much the same way as officer, whose right thereto ceases upon expiration of the fixed term for which he had been appointed or elected, is not and cannot be deemed "removed" or "dismissed" therefrom, upon the expiration of said term. The main difference between the former the primarily confidential officer and the latter is that the latter's term is fixed of definite, whereas that of the former is not pre-fixed, but indefinite, at the time of his appointment or election, and becomes fixed and determined when the appointing power expresses its decision to put an end to the services of the incumbent. When this even takes place, the latter is not "removed" or "dismissed" from office his term has merely "expired."

[248] Compare the nature of office involved in this case with Salazar v. Mathay, G.R. No. L-44061, 20 Sept 1976, 73 SCRA 285.

Corpus. The investigating committee found no basis for the allegations against Corpus and recommended his immediate reinstatement. Nevertheless, the Central Bank Governor, with the concurrence of the Monetary Board, ordered the dismissal of Corpus on the ground, among others, of lack of confidence. Thus, petitioner filed an action for certiorari, mandamus and *quo warranto,* and damages with preliminary injunction before the Court of First Instance. However, the Central Bank and its Monetary Board contended that lack of confidence of the one making the appointment constitutes sufficient and legitimate cause of removal for government officers occupying policy-determining, primarily confidential and highly technical positions and that such power is implicit in the 1935 Constitution, Art XII, Sec 4.[249]

Issue. Was Corpus illegally terminated?

Held. Yes. The tenure of officials holding "primarily confidential" positions (such as private secretaries of public functionaries) ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures; and thus their cessation involves no removal. But the situation is different for those "highly technical" posts requiring special skills and qualifications, such as the office occupied by Corpus. The Constitution clearly distinguishes the primarily confidential from the highly technical, and to apply the loss of confidence rule to the latter incumbents is to ignore and erase the differentiation expressly made by our fundamental charter. It is illogical that while an ordinary technician, say a clerk, stenographer, mechanic, or engineer, enjoys security of tenure and may not be removed at pleasure, a *highly* technical officer, such as an economist or a scientist of avowed attainments and reputation, should be denied security and be removable at any time, without right to a hearing or chance to defend himself. Moreover, Article XII of the 1935 Constitution, Sec. 4 states that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law. That provision recognizes no exception.

[249] A Civil Service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination.

Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law.

Luego v. Civil Service Commission

No. L-69137, 143 SCRA 327 [Aug 5, 1986]

Facts. On 18 Feb 1983, petitioner *Luego* was appointed Administrative Officer 11, Office of the City Mayor, Cebu City, by Mayor Solon. The appointment was described as "permanent" but the *Civil Service Commission* (CSC) approved it as "temporary," pending CSC's determination of the protest filed by private respondent Tuozo. After protracted hearings, the CSC found the Tuozo better qualified than Luego for the contested position and directed "that Tuozo be appointed to the Luego's position.

Issue. Is the CSC authorized to disapprove a permanent appointment on the ground that another person is better qualified than the appointee?

Held. No. Petitioner Luego is entitled to the office in dispute. Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. The CSC is not empowered to determine the kind or nature of the appointment extended by the appointing officer, its authority being limited to approving or reviewing the appointment in the light of the requirements of the Civil Service Law. When the appointee is qualified xxx the Commission cannot fault the appointment made by the authorized officer on the ground that there are others better qualified who should have been preferred, and it has no other choice but to attest to the appointment (*sic*). This is a political question involving considerations of wisdom which only the appointing authority can decide. The Commission xxx is only xxx allowed to check whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications prescribed by the law. If he does, his appointment is approved; if not, it is disapproved.

The duty of the CSC is to attest appointments and after that function is discharged, its participation in the appointment process ceases. It does not have the power to make the appointment itself or to direct the appointing authority to change the employment status of an employee.

Province of Camarines Sur v. Court of Appeals
GR 104639, 146 SCRA 281 [July 14, 1995]

Facts: On 1 Jan 1960, private respondent Dato was appointed as Private Agent by the then Governor of Camarines Sur, Maleniza. On 12 Oct 1972, he was promoted and was appointed Assistant Provincial Warden by then Governor Alfelor, Sr. Because he had no civil service eligibility for the position he was appointed to, Dato could not be legally extended a permanent appointment. Hence, what was extended to him was only a temporary appointment. Thereafter, the temporary appointment was renewed annually. On 1 Jan 1974, Governor Alfelor approved the change in Dato's employment status from temporary to permanent upon the latter's representation that he passed the civil service examination for supervising security guards. Said change of status however, was not favorably acted upon by the Civil Service Commission (CSC) reasoning that Dato did not possess the necessary civil service eligibility for the office he was appointed to. His appointment therefore remained temporary. On 16 Mar 1976, Dato was indefinitely suspended by Governor Alfelor after criminal charges were filed against him for allegedly conniving and/or consenting to evasion of sentence of some detention prisoners. On 19 Mar 1976, Mr. Rama, head of the Camarines Sur Unit of the CSC, wrote the Governor of Camarines Sur a letter informing him that the status of Dato has been changed from temporary to permanent, the latter having passed the examination for Supervising Security Guard. The change of status was to be made retroactive to 11 Jun 1974, the date of release of said examination.

Issue. Did Tito Dato's subsequent qualification for civil service eligibility *ipso facto* convert his temporary status to that of permanent?

Held. No. The fact that private respondent obtained civil service eligibility later on is of no moment as his having passed the supervising security guard examination, did not *ipso facto* convert his temporary appointment into a permanent one. In the instant case, what is required is a new appointment since a permanent appointment is not a continuation of the temporary appointment. Moreover, the CSC does not have the power to make the appointment itself or to direct the appointing authority to change the employment status of an employee. The duty of the CSC is to attest appointments and after that function is discharged, its participation in the appointment process ceases. CSC should have ended its participation in the appointment of private respondent on 1 Jan 1974 when it confirmed the *temporary* status of the latter who lacked the proper civil service eligibility. When it issued the foregoing communication on 19 March 1976, it stepped on the toes of the appointing authority, thereby encroaching on the discretion vested solely upon the latter.

The constitutional prohibition on political partisanship (sic) does not apply to members of the Cabinet. Their positions are essentially political and they may engage in partisan political activity.

Santos v. Yatco
No. L-13932, 106 Phil 21 [Dec 24, 1959]

Facts. Petitioner *Santos*, then Secretary of National Defense and head of the Department of National Defense, was sought to be enjoined from electioneering, in view of the explicit provision of the Civil Service Act of 1959 which prohibits all officers and employees in the civil service, "whether in the competitive or classified, or non-competitive or unclassified service," from engaging directly or indirectly in partisan political activities or taking part in any election except to vote." Santos was conducting a house-to-house campaign for Governor Martin, candidate of the Nacionalista Party in the Province of Bulacan. Judge *Yatco* of the Court of First instance of Rizal issued an order prohibiting Santos from campaigning personally or in an official capacity.

Issue. Should a member of the Cabinet be enjoined from partisan activities?

Held. No. The position of Secretary of National Defense is not embraced and included within the term *"officers and employees in the civil service"* as disclosed in the proceedings in the Constitutional Convention wherein the attempt of Delegate Mumar to include the heads of executive departments within the civil service was rejected. The positions of the members of the Cabinet are essentially political and they may engage in partisan political activity. Moreover, Santos was acting as member of the Cabinet in discussing the issues before the electorate and defending the actuations of the Administration to which he belongs. Members of the Cabinet are supposed to be the alter ego of the President and are in fact usually chosen principally for the political influence they were expected to exert for the purpose of ensuring support for the administration.

Employees in the civil service may not resort to strikes, walk-outs and other temporary work stoppages to pressure the Government to accede to their demands.

SSS Employees Assoc. v. Court of Appeals[250]
GR 85279, 175 SCRA 686 [July 28, 1989]

Facts. SSS Employees Association (SSEA) went on strike after the Social Security Service (SSS) failed to act on the union's demands.[251] Hence, SSS filed with the RTC a complaint which prayed for the issuance of a writ of preliminary injunction to enjoin the strike, for the strikers to be ordered to return to work, for the SSEA to be ordered to pay damages, and for the strike to be declared illegal.

Issue. Are the employees of the SSS covered by the prohibition against strikes?

Held. Yes. Under the Constitution "the civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters"[252] and that the SSS is one such government-controlled corporation with an original charter, having been created under R.A. No. 1161, its employees are part of the civil service and are covered by the Civil Service Commission's memorandum prohibiting strikes. This being the case, the strike staged by the employees of the SSS was illegal.

PROHIBITIONS
Art IX-B, Sec 7.

[250] Compare this case with TUPAS v. National Housing Corporation.
G.R. No. L-49677 May 4, 1989 173 SCRA 33.

[251] SSEA's demands include "implementation of the provisions of the old SSS-SSSEA collective bargaining agreement (CBA) on check-off of union dues; payment of accrued overtime pay, night differential pay and holiday pay; conversion of temporary or contractual employees with six (6) months or more of service into regular and permanent employees and their entitlement to the same salaries, allowances and benefits given to other regular employees of the SSS; and payment of the children's allowance of P30.00, and after the SSS deducted certain amounts from the salaries of the employees and allegedly committed acts of discrimination and unfair labor practices.

[252] 1987 Constitution. Art. IX(B), Sec. 2(1).

In order that additional duties or functions may not transgress the prohibition embodied in Section 13, Article VII of the 1987 Constitution,[253] *such additional duties or functions must be required by the primary functions of the official concerned, who is to perform the same in an ex-officio capacity as provided by law, without receiving any additional compensation therefor.*

Civil Liberties Union v. Executive Secretary
GR 83896, 194 SCRA 317 [Feb 22, 1991]

Facts. Petitioner *Civil Liberties Union* and Anti-Graft League of the Phils, among others, assailed the validity of Executive Order no. 284[254] issued by Pres. Aquino. Petitioners maintained that EO 284 which allows members of the Cabinet, their undersecretaries and assistant secretaries to hold other government offices or positions in addition to their primary positions, runs counter to Section 13, Article VII of the 1987 Constitution.[255] Petitioners argued that Executive Order No. 284 adds exceptions to Section 13, Article VII other than those provided in the Constitution, namely: (1) The Vice-President may be appointed as a Member of the Cabinet under Section 3, par. (2), Article VII thereof; and (2) the Secretary of Justice is an *ex-officio* member of the Judicial and Bar Council by virtue of Section 8(1), Article VIII. Petitioners further contended that the exception to the prohibition in

[253] 1987 Constitution. Art VII, Sec 13. Section 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

[254] EO 284, Sec. 1. xxx a member of the Cabinet, undersecretary or assistant secretary or other appointive officials of the Executive Department may, in addition to his primary position, hold not more than two positions in the government and government corporations and receive the corresponding compensation therefor xxx.

[255] *Supra*.

Section 7, par. (2), Article IX-B on the Civil Service Commission[256] applies to officers and employees of the Civil Service in general and that said exceptions do not apply and cannot be extended to Section 13, Article VII which applies specifically to the President, Vice-President, Members of the Cabinet and their deputies or assistants.

Issue. Is EO No. 284 unconstitutional?

Held. Yes. EO No. 284 is unconstitutional. In order that such additional duties or functions may not transgress the prohibition embodied in Section 13, Article VII of the 1987 Constitution,[257] such additional duties or functions must be required by the primary functions of the official concerned, who is to perform the same in an ex-officio capacity as provided by law, without receiving any additional compensation therefor. Ostensibly restricting the number of positions that Cabinet members, undersecretaries or assistant secretaries may hold in addition to their primary position to not more than two (2) positions in the government and government corporations, EO No. 284 actually allows them to hold multiple offices or employment in direct contravention of the express mandate of Section 13, Article VII of the 1987 Constitution[258] prohibiting them from doing so, unless otherwise provided in the 1987 Constitution itself.

The view that an elective official may be appointed to another post if allowed by law or by the primary functions of his office, ignores the clear-cut difference in the wording of the two (2) paragraphs of Sec. 7, Art. IX-B, of the Constitution.[259] While the second paragraph authorizes holding of multiple offices by an appointive official when allowed by law or by the primary functions of his position, the first paragraph appears to be more stringent by not providing any exception to the rule against appointment or designation of an elective official to the government post, except as are particularly recognized in the Constitution itself.

Flores v. Drilon

GR 104732, 223 SCRA 568 [June 22, 1993]

Facts. The proviso in Sec. 13(d)[260] of the "Bases Conversion and Development Act of 1992,"[261] which reads "*Provided, however*, *That for the first year of its operations from the effectivity of this Act, the mayor of the City of Olongapo shall be appointed as the chairman and chief executive officer of the Subic Authority*," under which Mayor Richard J. Gordon of Olongapo City was appointed Chairman and Chief Executive Officer of the Subic Bay Metropolitan Authority (SBMA), was challenged on the ground that it infringes, among others, Sec. 7, first par., Art. IX-B, of the Constitution, which states that "*no elective official shall be eligible for appointment or designation in any capacity to any public officer or position during his tenure*," because the City Mayor of Olongapo City is an elective official and the subject posts are public offices.

[256] 1987 Constitution. Art IX-B. Sec 7(2). Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporation or their subsidiaries.

[257] *Supra*.

[258] *Id*.

[259] 1987 Constitution Art IX-B, Sec 7. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure. Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

[260] Bases Conversion and Development Act of 1992, Sec 13(d). *Chairman administrator.* The President shall appoint a professional manager as administrator of the Subic Authority with a compensation to be determined by the Board subject to the approval of the Secretary of Budget, who shall be the *ex oficio* chairman of the Board and who shall serve as the chief executive officer of the Subic Authority: *Provided, however, That for the first year of its operations from the effectivity of this Act, the mayor of the City of Olongapo shall be appointed as the chairman and chief executive officer of the Subic Authority*. (Emphasis supplied)

[261] Bases Conversion and Development Act of 1992, Sec 13(d). *Chairman administrator.* The President shall appoint a professional manager as administrator of the Subic Authority with a compensation to be determined by the Board subject to the approval of the Secretary of Budget, who shall be the *ex oficio* chairman of the Board and who shall serve as the chief executive officer of the Subic Authority: *Provided, however, That for the first year of its operations from the effectivity of this Act, the mayor of the City of Olongapo shall be appointed as the chairman and chief executive officer of the Subic Authority*. (Emphasis supplied)

Issue. Does the aforequoted *proviso* violate the constitutional proscription against appointment or designation of elective officials to other government posts?

Held. Yes. The view that an elective official may be appointed to another post if allowed by law or by the primary functions of his office, ignores the clear-cut difference in the wording of the two (2) paragraphs of Sec. 7, Art. IX-B, of the Constitution.[262] While the second paragraph authorizes holding of multiple offices by an *appointive* official when allowed by law or by the primary functions of his position, the first paragraph appears to be more stringent by not providing any exception to the rule against appointment or designation of an *elective* official to the government post, except as are particularly recognized in the Constitution itself. Moreover, Congress did not contemplate making the subject SBMA posts as *ex officio* or automatically attached to the Office of the Mayor of Olongapo City without need of appointment. The phrase "shall be appointed"[263] unquestionably shows the intent to make the SBMA posts appointive and not merely adjunct to the post of Mayor of Olongapo City.

PROHIBITION AGAINST ADDITIONAL,DOUBLE OR INDIRECT COMPENSATION
Article IX-B, Sec 8.

Quimson v. Ozaeta

GR 83896, 98 PHIL 705 [Mar 26, 1956]

Facts. Petitioner *Braulio Quimson* was deputy provincial treasurer and municipal treasurer of Caloocan, Rizal when he was appointed as agent-collector of the Rural Progress Administration.[264] Respondent Ozaeta, who by reason of his office of Secretary of Justice was acting as Chairman of the Board of Directors of said Administration, signed the appointment and forwarded the papers to the President for approval. However, without waiting for the approval of the appointment, Quimson assumed his position and rendered service as agent-collector until his services were considered terminated. Thereafter, the manager of the Administration inquired from the auditor of the Administration whether Quimson could be paid for the period of actual services rendered by him, but said auditor gave the opinion that it could not be done for the reason that the appointment extended to Quimson was clearly illegal and the Administration may not be obliged to pay him for the services rendered since it was a violation of Sec 3, Art XII of the 1935 Constitution [now Sec 8, Art IX-B] prohibiting double compensation. Because of the circumstances, Quimson filed a complaint for recovery of accrued salaries but was dismissed.

Issue. Is the salary supposedly due to petitioner for the services he rendered as agent-collector violative of Art IX-B, Sec 8 of the Constitution?

Held. Yes. The employment of appellant as agent collector was not in itself unlawful because there is no incompatibility between said appointment and his employment as deputy provincial treasurer and municipal treasurer. There is no legal objection to a govt official occupying two govt offices and performing the functions of both as long as there is no incompatibility. The constitutional prohibition refers to double compensation and not to double appointments and performance of functions of more than one office. Appellant, however, assumed office without waiting for the result of the action to be taken upon his appointment by the President and the different offices which his appointment had to go through. He, therefore, took the risk or hazard of not being paid for any service that he may render in the meantime.

COMMISSION ON ELECTIONS

COMPOSITION AND QUALIFICATIONS
Art IX-C, Sec 1.

To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice

[262] *Supra.*

[263] The Rural Progress Administration is a public corporation created for the purpose of acquiring landed estates through purchase, expropriation or lease, and later sub-letting or sub-leasing the same to tenants or occupants. Its officials and employees may be considered as civil service employees embraced in the classified service.

[264] Bases Conversion and Development Act of 1992, Sec 13(d). *Supra*.

or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill.

Cayetano v. Monsod
GR 100113, 201 SCRA 210 [Sept 3, 1991]

Facts. Petitioner *Cayetano*, as a citizen and taxpayer, questioned the appointment of respondent *Monsod* as the Chairman COMELEC for lack of necessary qualification of having engaged in the practice of law for at least 10 years.[265] It was established that after graduation from the College of Law and having hurdled the bar, Monsod worked in the law office of his father for a short while, then worked as an operation officer in the World Bank Group for about 2 years, which involved getting acquainted with the laws of member-countries negotiation loans and coordinating legal, economic and project work of the Bank. Upon returning to the Philippines, he worked with the Meralco Group, served as chief executive officer if an investment bank and has subsequently worked either as chief executive officer or consultant of various offices, He was also named as Secretary-General and later National Chairman of NAMFREL, which made him knowledgeable in election laws. He appeared for NAMFREL in its accreditation hearings before the Commission. He also claimed to have worked with the underprivileged sectors, and was also a member of the Davide Commission as well as the Constitutional Commission.

Issue. Does Monsod possess the requisite qualification of having engaged in the practice of law?

Held. Yes. Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill. Interpreted in the light of the various definitions of the term "practice of law," particularly the modern concept of law practice, and taking into consideration the liberal construction intended by the framers of the Constitution, Atty. Monsod's past work experiences as a lawyer-economist, a lawyer-manager, a lawyer-entrepreneur of industry, a lawyer-negotiator of contracts, and a lawyer-legislator of both the rich and the poor verily more than satisfy the constitutional requirement that he has been engaged in the practice of law for at least ten years.

The President has no power to appoint a temporary Chairman lest the Commission's independence be corroded

Brillantes v. Yorac
GR 93867, 192 SCRA 358 [Dec 18, 1990]

Facts. President Aquino designated Associate Commissioner *Yorac* as Acting Chairman of COMELEC, in place of Chairman Davide, who had been named chairman of the fact-finding commission to investigate the December 1989 coup d' etat attempt. Brillantes challenged the act of the President as contrary to the constitutional provision that ensures the independence the COMELEC as an independent constitutional body and the specific provision that "In no case shall any Member (of the Commission on Elections) be appointed or designated in a temporary or acting capacity." Brillantes contended that the choice of the Acting Chairman of the Commission on Elections is an internal matter that should be resolved by the members themselves and that the intrusion of the President of the Philippines violates their independence. The Solicitor General averred that the designation made by the President of the Philippines should therefore be sustained for reasons of "administrative expediency," to prevent disruption of the functions of the COMELEC.

Issue. May the President designate the Acting Chairman of the COMELEC in the absence of the regular Chairman?

Held. No. the Constitution expressly describes all the Constitutional Commissions as "independent." They are not under the control of the President of the Philippines in the discharge of their respective functions. The choice of a temporary chairman in the absence of the regular chairman comes under that discretion. That discretion cannot be exercised for it, even with its consent, by the President of the Philippines.

[265] 1987 Constitution. Art IX-C, Sec 1(1). There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding -elections. However, a majority thereof, including the *Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years.* (Emphasis supplied)

The lack of a statutory rule covering the situation at bar is no justification for the President of the Philippines to fill the void by extending the temporary designation in favor of the respondent. The situation could have been handled by the members of the Commission on Elections themselves without the participation of the President, however well-meaning. In the choice of the Acting Chairman, the members of the Commission on Elections would most likely have been guided by the seniority rule as they themselves would have appreciated it. In any event, that choice and the basis thereof were for them and not the President to make.

A procedural lapse or error should be distinguished from lack of jurisdiction. In the former, the proceedings are null and void if and when the error is shown to have caused harm while in the latter, the proceedings are null and void unconditionally.

Lindo v. COMELEC
GR 95016,194 SCRA 25 [Feb 11, 1991]

Facts. Petitioner *Lindo* and private respondent Velasco were rival candidates for the position of municipal mayor of Ternate, Cavite in the May 1988 local elections. Lindo was proclaimed the elected mayor. Velasco filed an election protest with the RTC praying for the revision of the ballots. After the revision of the ballots, the trial court rendered a decision and proclaimed Lindo the winner. On 12 Feb 1990, counsel for Lindo, Atty. Amado Montajo, was served a copy of the decision. Velasco's counsel was also served a copy of the decision which he received on 16 Feb 1990. On 17 Feb 1990, Velasco appealed to the COMELEC on the ground that the winner in an election protest case should be determined not only on the basis of the results obtained from the contested precincts but from the results of both the contested and uncontested precincts. Lindo filed an appeal on 26 Feb 1990, claiming that he knew of the decision only on 22 Feb 1990. On 26 Feb 1990, the trial court gave due course to the appeal of Velasco and denied due course to Lindo's appeal on the ground that it was filed out of time. Lindo, filed a motion with the COMELEC praying that respondent trial court's order denying due course to his notice of appeal be set aside. Velasco's appeal and Lindo's motion were consolidated in one case. After hearing the arguments of the parties, the COMELEC (First Division) reversed the lower court's decision, and declared Velasco the winner. Lindo imputed grave abuse of discretion on the part of COMELEC for disregarding its own rules regarding promulgation of a decision in election protest cases.[266] Lindo argued that the act of merely furnishing the parties with a copy of the decision, as was done in the trial court, violated COMELEC rules and did not constitute a valid promulgation. Since there was no valid promulgation, the five (5) day period within which the decision should be appealed to the COMELEC did not commence to run.

Issue. Did COMELEC commit grave abuse of discretion when it disregarded its own rules regarding promulgation of a decision in election protest cases?

Held. No. Promulgation of a lower court's decision[267] is different from the additional requirement imposed by the COMELEC rules of notice in advance of promulgation. What was wanting and what the petitioner apparently objected to was not the promulgation of the decision but the failure of the trial court to serve notice in advance of the promulgation of its decision as required by the COMELEC rules. The additional requirement imposed by the COMELEC rules of notice in advance of promulgation, however, is not part of the process of promulgation The failure to serve such notice in advance of the promulgation may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor of the promulgation of said decision. A procedural lapse or error should be distinguished from lack of jurisdiction. In the former, the proceedings are null and void if and when the error is shown to have caused harm while in the latter, the proceedings are null and void unconditionally. Lindo's protestations of denial of due process when his notice of appeal was denied for having been filed out of time must also fail. The records show that Lindo's counsel of record, Atty Montajo, received a copy of the decision on 12 Feb 1990. The five-day period for petitioner to file his appeal from the decision of the trial court commenced to run from such date. Lindo appealed only on 26 Feb 1990, 14 days after

[266] The rule referred to is Section 20 of Rule 35 of the Comelec Rules of Procedure which provides: Sec. 20. *Promulgation and Finality of Decision*. The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final five (5) days after promulgation. No motion for reconsideration shall be entertained.

[267] Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel. It is the delivery of a court decision to the clerk of court for filing and publication.

his counsel was served a copy of the decision. Clearly, his appeal was filed out of time. Moreover, this case had been pending with the trial court for almost 2 years. Election protests are supposed to be summary in nature.[268] The proceedings should not be allowed to drag on during the term of the contested position with the result that the elected would be deprived of his right to the office and the defeated would discharge the office which he was not entitled to.

POWERS AND FUNCTIONS
Art IX-C, Sec 2.

The assumption of jurisdiction by the trial court over a case involving the enforcement of the Election Code is at war with the plain constitutional command which vests the COMELEC with the exclusive charge of the enforcement of all laws relative to the conduct of elections.[269]

Gallardo v. Judge Tabamo
A.M. No. RTJ-92-881, 218 SCRA 253 [2 Jun 1994]

Facts. Petitioner Gov. *Gallardo*, and Cong. Romualdo were both candidates in the 11 May 1992 elections for the positions of congressmen and governor, respectively, of Camiguin. They belonged to opposing political factions and were in a bitter electoral battle. Upon the petition of Cong. Romualdo, respondent Judge *Tabamo*, Jr. of the RTC issued an Order restraining the continuance of various public works projects being undertaken by the provincial government and the disbursement of funds therefor, allegedly in violation of a 45-day ban on public works imposed by the Omnibus Election Code. Hence, Gov. Gallardo filed a letter-complaint with the SC charging Judge Tabamo, Jr. with manifest bias and partiality and highly irregular and outrightly illegal acts in connection with the aforequoted case filed before his court. Gallardo alleged that respondent Judge, in spite of the fact that it was the COMELEC, not the RTC, which had jurisdiction over the case, took cognizance of the same and issued the temporary restraining order.

Issue. May a Regional Trial Court issue a temporary restraining order stopping the prosecution of the public works projects on the ground that it violated the 45-day ban on public works imposed by the Omnibus Election Code?

Held. No. The COMELEC is vested by the Constitution with the exclusive charge of the enforcement of all laws relative to the conduct of elections, the assumption of jurisdiction by the trial court over a case involving the enforcement of the Election Code is at war with the plain constitutional command,[270] the implementing statutory provisions, and the hospitable scope afforded such grant of authority so clear and unmistakable in recent decisions.

The COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition, and mandamus xxx in aid of its appellate jurisdiction.

Relampagos v. Cumba[271]
GR 118861, 243 SCRA 690 [Apr 27, 1995]

Facts: Petitioner *Relampagos* and private respondent *Cumba* were candidates for the position of Mayor in the municipality of Magallanes, Agusan del Norte during the 11 May 1992 elections. Cumba was proclaimed the winning candidate, with a margin of only twenty-two votes over Relampagos. Relampagos then filed an election protest with the Regional Trial Court (RTC). The trial court found Relampagos to have won with a margin of six votes over Cumba. Copies of the decision were sent to and received by the petitioner and the private respondent on 1 July 1994. On 4 July 1994, Cumba appealed the decision to the COMELEC by filing her notice of appeal. On 12 July 1994, Relampagos subsequently filed with the trial court a motion for execution. The trial court granted the motion and

[268] BP 881, Art. 258. *Preferential disposition of contests in courts.* - The courts, in their respective cases, shall give preference to election contests over all other cases, except those of habeas corpus, and shall without delay, hear and, within thirty days from the date of their submission for decision, but in every case within six months after filing, decide the same.

[269] 1987 Constitution, Art IX-C, Sec 2(1). Sec. 2. The Commission on Elections shall exercise the following powers and functions:

xxx xxx xxx

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

[270] 1987 Constitution, Art IX-C, Sec 2(1). *Supra*.

[271] Compare this case with Edding v. Comelec, G.R. No. 112060, 17 Jul 1995, 246 SCRA 502 on the issue of COMELEC's assumption of jurisdiction over the case.

issued the writ of execution. Cumba then filed with respondent COMELEC a petition for *certiorari* to annul the aforesaid decision of the trial court granting the motion for execution pending appeal and the writ of execution. The COMELEC resolved the petition in favor of Cumba on the ground that it has exclusive authority to hear and decide petitions for *certiorari*, prohibition and *mandamus* in election cases as authorized by law. COMELEC nullified the trial court's decision and ordered Cumba restored to her position as Mayor.

Issue: Does the COMELEC have the exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus in election cases authorized by law?

Held: Yes. Section 50 of B.P. Blg. 697[272] which provides that "the Commission is hereby vested with exclusive authority to hear and decide petitions for *certiorari*, prohibition and *mandamus* involving election cases" remains in full force and effect but only in such cases where, under paragraph (2), Section 1, Article IX-C of the Constitution, it has exclusive appellate jurisdiction. Simply put, the COMELEC has the authority to issue the extraordinary writs of *certiorari*, prohibition, and *mandamus* only in aid of its appellate jurisdiction.

Therefore, RTC acted with palpable and whimsical abuse of discretion in granting the petitioner's motion for execution pending appeal and in issuing the writ of execution. Since both the petitioner and the private respondent received copies of the decision on 1 July 1994, an appeal therefrom may be filed within five days or on or before 6 July 1994. Any motion for execution pending appeal must be filed before the period for the perfection of the appeal. On 4 July 1994, Cumba filed her notice of appeal. On 8 July 1994, the trial court gave due course to the appeal and ordered the elevation of the records of the case to the COMELEC. Upon the perfection of the appeal, the trial court was divested of its jurisdiction over the case. Since the motion for execution pending appeal was filed only on 12 July 1994, or after the perfection of the appeal, the trial court could no longer validly act thereon. Accordingly, since the respondent COMELEC has the jurisdiction to issue the extraordinary writs of *certiorari*, prohibition, and *mandamus*, then it correctly set aside the challenged order granting the motion for execution pending appeal and writ of execution issued by the trial court.

The COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition, and mandamus xxx in aid of its appellate jurisdiction.

Edding v. COMELEC[273]

GR 112060, 246 SCRA 502 [Jul 17, 1995]

Facts. During the 11 May 1992 elections, petitioner *Edding* and respondent Bernardo were among the candidates for the office of the municipal mayor of Sibuco Zamboanga del Norte. Bernardo was declared winner over Edding by 212 votes. Edding filed an election protest with the RTC. The RTC rendered judgment on 2 July 1993 proclaiming Edding as the winner of the election for the mayoralty seat, and declaring as null and void the election of respondent Bernardo. On 8 Jul 1993, Bernardo filed an appeal while Edding moved for the immediate execution of the 2 July 1993 decision. Bernardo opposed Edding's motion, claiming that the RTC has no jurisdiction to order execution pending appeal, and invoked Section 17 of Ruler 37 of the COMELEC Rules of Procedure which allows execution only if the judgment has become final. On 12 Jul 1993, the RTC approved Bernardo's Notice of Appeal. On the next day however, the RTC granted Edding's Motion for Immediate Execution, and ordered the records of the case to be forwarded to the COMELEC. Thereafter, Edding replaced Bernardo, and assumed office on 15 Jul 1993. Hence, Bernardo filed with the COMELEC a Petition for *Certiorari* with Application for Preliminary Injunction and for Issuance of a Temporary Restraining Order. COMELEC issued a temporary restraining order.

Issue. Does the COMELEC have the power to issue writs of *certiorari*, prohibition and *mandamus*?

Held. Yes.[274] The jurisdiction of the COMELEC to issue writs of *certiorari*, prohibition and *mandamus* over election cases where it has appellate

[272] B.P. Blg. 697 is not inconsistent with the repealing clause of the Omnibus Election Code (OEC). It does not evidently appear that OEC had intended to codify all prior election statutes, such as BP 697, and to replace them with the new Code. It made, in fact, by the second sentence, a reservation that all prior election statutes or parts thereof not inconsistent with any provisions of the Code shall remain in force.

[273] Compare this case with Relampagos v. Cumba, G.R. No. 118861, 27 Apr 1995, 243 SCRA 690 on the issue of COMELEC's assumption of jurisdiction over the case.

jurisdiction is based on Sec 50 of BP Blg. 697, which provides: The commission is hereby vested with the exclusive authority to hear and decide petitions for *certiorari*, prohibition and *mandamus* involving election cases.

However, the COMELEC committed grave abuse of discretion when it enjoined the order of the RTC, dated 13 Jul, 1993, granting Edding's motion for immediate execution. It appears that on 8 July 1993, the same day when Bernardo filed his notice of appeal with the RTC, Edding in turn filed his motion for immediate execution. Both actions were therefore seasonably filed within the five-day reglementary period for filling an appeal since the decision of the RTC was promulgated in open court on 8 July 1993.The settled rule is that the mere filing of a notice of appeal does not divest the trial court of its jurisdiction over a case and resolve pending incidents. Where the motion for execution pending appeal was filed within the reglementary period for perfecting an appeal the filing of a notice of appeal by the opposing party is of no moment and does not divest the trial court of its jurisdiction to resolve the motion for immediate execution of the judgment pending appeal because the court must hear and resolve it for it would become part of the records to be elevated on appeal. Since the court has jurisdiction to act on the motion at the time it was filed, that jurisdiction continued until the matter was resolved and was not lost by the subsequent action of the opposing party.

The fact that decisions, final orders or rulings of COMELEC in contests involving elective municipal and barangay offices are final, executory and not appealable, does not preclude a recourse to the Supreme Court by way of a special civil action of certiorari.

Galido v. COMELEC

GR 95346, 193 SCRA 78 [Jan 18, 1991]

Facts. Petitioner *Galido* and private respondent Galeon were candidates during the 18 Jan 1988 local elections for the position of mayor in the Municipality of Garcia-Hernandez, Bohol. Galido was proclaimed duly-elected Mayor. Galeon filed an election protest before the RTC. Said court upheld the proclamation of petitioner as the duly-elected Mayor, by a majority of eleven (11) votes. Galeon appealed to COMELEC. COMELEC reversed the trial court's decision and declared Galeon the duly-elected mayor by a plurality of five (5) votes. Galido filed before the Supreme Court a petition for *certiorari* and injunction. Private respondent Galeon, however, invoked Article IX (C), Section 2(2), paragraph 2 of the 1987 Constitution, which reads "Decisions, final orders, or ruling of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable."

Issue. May petitioner Galido assail the aforequoted COMELEC decision by way of certiorari in view of 1987 Constitution, Art IX-C, Sec 2(2)?

Held. Yes.[275] The fact that decisions, final orders or rulings of the COMELEC in contests involving elective municipal and barangay offices are final, executory and not appealable, does not preclude a recourse to the Supreme Court by way of a special civil action of *certiorari.* However, in the instant case, COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the questioned decision. The COMELEC has the inherent power to decide an election contest on physical evidence, equity, law and justice, and apply established jurisprudence in support of its findings and conclusions. Hence, Galido's petition is dismissed.

The Constitution empowers the COMELEC to conduct preliminary investigations in cases involving election offenses for the purpose of helping the Judge determine probable cause and for filing an information in court.

People v. Inting

GR 88919, 187 SCRA 788 [July 25, 1990]

[274]However, that the term of office for the disputed mayoralty seat will already expire on June 30, 1995, in addition to the fact that the election for the next term of office for the contested post has recently been concluded, the instant petition has therefore become moot.

[275] The proceedings in the Constitutional Commission on this matter are enlightening. During the floor deliberations, MR. REGALADO pointed out that while COMELEC decisions with respect to barangay and municipal officials are final and immediately executory and, therefore, not appealable, that does not rule out the possibility of an original special civil action for *certiorari*, prohibition, or *mandamus*, as the case may be, under Rule 65 of the Rules of Court.

Facts. Mrs. Barba filed a letter-complaint against OIC-Mayor Regalado of Tanjay, Negros Oriental with the COMELEC for allegedly transferring her, a permanent Nursing Attendant, Grade I, in the office of the Municipal Mayor to a very remote barangay and without obtaining prior permission or clearance from COMELEC as required by law. After a preliminary investigation of Barba's complaint, Atty. Lituanas found a *prima facie* case. Hence, on September 26, 1988, he filed with the respondent trial court a criminal case for violation of section 261, Par. (h), Omnibus Election Code against the OIC-Mayor. In an Order dated September 30, 1988, the respondent court issued a warrant of arrest against the accused OIC Mayor. However, in an order dated October 3, 1988 and before the accused could be arrested, the trial court set aside its September 30, 1988 order on the ground that Atty. Lituanas is not authorized to determine probable cause pursuant to Section 2, Article III of the 1987 Constitution. The trial court later on quashed the information. Hence, this petition.

*Issue***.** Does a preliminary investigation conducted by a Provincial Election Supervisor involving election offenses have to be coursed through the Provincial Prosecutor, before the Regional Trial Court may take cognizance of the investigation and determine whether or not probable cause exists?

Held. No. The Constitution empowers the COMELEC to conduct preliminary investigations in cases involving election offenses for the purpose of helping the Judge determine probable cause and for filing an information in court. This power is exclusive with COMELEC. The evident constitutional intendment in bestowing this power to the COMELEC is to insure the free, orderly and honest conduct of elections, failure of which would result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote. To divest the COMELEC of the authority to investigate and prosecute offenses committed by public officials in relation to their office would thus seriously impair its effectiveness in achieving this clear constitutional mandate. Bearing these principles in mind, it is apparent that the respondent trial court misconstrued the constitutional provision when it quashed the information filed by the Provincial Election Supervisor.

The acts of COMELEC's deputies within the lawful scope of their delegated authority are, in legal contemplation, the acts of the COMELEC itself.[276]

People v. Basilia

GR 83938-40, 187 SCRA 788 [Nov 6, 1989]

Facts. After the May 1987 congressional elections in Masbate, complaints for violations of Section 261 of the Omnibus Election Code (BP Blg. 881)[277] were filed with the Office of the Provincial Fiscal of Masbate against the spouses Jaime and Adoracion Tayong for violation of Section 261, paragraph a-1, for vote-buying; against Salvacion Colambot for violation of Section 261, paragraph a-1, also for vote buying; and against Melchor Yanson for violation of Section 261, paragraph p, for carrying of deadly weapon. After preliminary investigation of the aforequoted complaints, the Provincial Fiscal of Masbate filed the appropriate cases in the Regional

[276] EO 134. Sec 11. Prosecution. Commission shall, through its duly authorized legal officers, have exclusive power to conduct preliminary investigation of all election offenses punishable as provided for in the preceding section, and to prosecute the same: Provided, That in the event that the Commission fails to act on any complaint within two (2) months from filing, the complainant may file the complaint with the Office the Fiscal or with the Department for Justice for proper investigation and prosecution, if warranted. *The Commission may avail of the assistance of other prosecuting arms of the government*. (Emphasis supplied)

[277] BP 881, Sec 261. *Prohibited Acts.* - The following shall be guilty of an election offense:

(a) *Vote-buying and vote-selling*. (1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.]

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(p) *Deadly weapons*. - Any person who carries any deadly weapon in the polling place and within a radius of one hundred meters thereof during the days and hours fixed by law for the registration of voters in the polling place, voting, counting of votes, or preparation of the election returns. However, in cases of affray, turmoil, or disorder, any peace officer or public officer authorized by the Commission to supervise the election is entitled to carry firearms or any other weapon for the purpose of preserving order and enforcing the law.

Trial Court of Masbate. However, accused-respondent Judge Henry Basilla *motu proprio* dismissed the 3 information filed by the Provincial Fiscal. Basilia argued that the complaints should have been filed with the COMELEC not with the fiscal pursuant to 1987 Constitution, Art IX-C, Sec. 2(6). Moreover, the judge found that the COMELEC did not investigate the cases.

Issue. Should the three information be dismissed on the basis of 1987 Constitution, Art IX-C, Sec. 2(6)?

Held. No. While Section 265 of the Omnibus Election Code vests "exclusive power" to conduct preliminary investigation of election offenses and to prosecute the same upon the Comelec, it at the same time authorizes the Comelec to avail itself of the assistance of other prosecuting arms of the Government. Section 2 of Article IX-C of the 1987 Constitution clearly envisage that the Comelec would not be compelled to carry out all its functions directly and by itself alone. Further, the concurrence of the President with the deputation by Comelec of the prosecuting arms of the Government, was expressed in general terms and in advance in Executive Order No. 134.

When the COMELEC conducts the preliminary investigation of an election offense and upon a prima facie finding of a probable cause files the information in the proper court, said court thereby acquires jurisdiction over the case.

People v. Delgado
GR 79672, 189 SCRA 715 [Feb 15, 1990]

Facts. On 14 Jan 1988, the COMELEC received a report-complaint from the Election Registrar of Toledo City against private respondents for alleged violation of the Omnibus Election Code. The COMELEC directed the Provincial Election Supervisor of Cebu to conduct the preliminary investigation of the case who eventually recommended the filing of an information against each of the private respondents for violation of the Omnibus Election Code. The COMELEC *en banc* resolved to file the information against the private respondents as recommended. Private respondents filed motions for reconsiderations and the suspension of the warrant of arrest with the respondent court on the ground that no preliminary investigation was conducted. Later, an order was issued by respondent court directing the COMELEC through the Regional Election Director of Region VII to conduct a reinvestigation of said cases. The COMELEC Prosecutor filed a motion for reconsideration and opposition to the motion for reinvestigation alleging therein that it is only the Supreme Court that may review the decisions, orders, rulings and resolutions of the COMELEC. This was denied by the court.

Issue. Does the Regional Trial Court (RTC) have the authority to review the actions of the Commission on Elections (COMELEC) in the investigation and prosecution of election offenses filed in said court.

Held. Yes. Based on the Constitution and the Omnibus Election Code, it is clear that aside from the adjudicatory or quasi-judicial power of the COMELEC to decide election contests and administrative questions, it is also vested the power of a public prosecutor with the exclusive authority to conduct the preliminary investigation and the prosecution of election offenses punishable under the Code before the competent court. Thus, when the COMELEC, through its duly authorized law officer, conducts the preliminary investigation of an election offense and upon a *prima facie* finding of a probable cause, files the information in the proper court, said court thereby acquires jurisdiction over the case. Consequently, all the subsequent disposition of said case must be subject to the approval of the court. The COMELEC cannot conduct a reinvestigation of the case without the authority of the court or unless so ordered by the court.

COMELEC v. Judge Silva
GR 129417, 286 SCRA 177 [Feb 10, 1998]

Facts. Pursuant to its mandate,[278] COMELEC charged private respondents of having tampered, in conspiracy with one another, with the certificates of canvass by increasing the votes received by then senatorial candidate Juan Ponce Enrile in certain municipalities of Bataan. Chief State Prosecutor Zuno, who had been designated by the COMELEC to prosecute the cases, filed a comment joining private respondents' request for the dismissal of the case, among others. Said cases were then summarily dismissed by respondent judges. The COMELEC sought to appeal the dismissal of the cases but to no avail.

[278] Art IX-C, Sec 2 (6)

Issue. May the Chief State Prosecutor decide not to appeal the orders of dismissal of respondent judges?

Held. No. The authority to decide whether or not to appeal the dismissal belongs to the COMELEC. Art. IX-C, §2(6) of the Constitution expressly vests in it the power and function to "investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices."

PROCEEEDING
Art IX-C, Sec 3.

The COMELEC, sitting en banc, does not have the authority to hear and decide election cases at the first instance. These cases must first be heard and decided by a Division of the Commission.

Sarmiento v. COMELEC
GR 105628, 212 SCRA 307 [Aug 6, 1992]

Facts. Petitioner *Sarmiento* filed an action for certiorari before the Supreme Court which seeks to set aside the resolution of the *COMELEC* in SPC No. 92-266. The aforementioned COMELEC resolution reversed the ruling of the Municipal Board of Canvassers of Virac, Catanduanes which ordered the exclusion of one election return from the canvass. Petitioner impugned said resolution as having been issued with grave abuse of discretion in that, *inter alia*, the Commission, sitting *en banc*, took cognizance of and decided the appeals without first referring them to any of its Divisions.

Issue. May the COMELEC, sitting en banc, take cognizance of and decide appeals without first referring them to any of its Divisions?

Held. No. Sec 3, Art IX-C of the 1987 Constitution provides that "The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of *election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc*." According to the aforequoted constitutional provision, all election cases, which include pre-proclamation controversies, must first be heard and decided by a Division of the Commission. The Commission, sitting *en banc*, does not have the authority to hear and decide the same at the first instance.[279]

It is the decision, order or ruling of the COMELEC en banc that may be brought to the Supreme Court on certiorari.

Reyes v. RTC of Oriental Mindoro
GR 108886, 244 SCRA 41 [May 5, 1995]

Facts. Petitioner *Reyes* and private respondent Comia were candidates for the position of member of the Sangguniang Bayan of Naujan, Oriental Mindoro on 11 May 1992 elections. On 13 May 1992, the Municipal Board of Canvassers proclaimed Reyes as the eighth winning candidate. Comia filed an election protest before the trial court which rendered its decision annuling the proclamation of Reyes and declaring Comia as the eighth winning candidate. Reyes appealed to the COMELEC. However, the COMELEC's First Division dismissed his appeal on the ground that he had failed to pay the appeal fee within the prescribed period. He then brought the present action before the Supreme Court without first filing a motion for reconsideration before the COMELEC sitting en banc.

Issue. May a decision made by a division of the COMELEC be brought before the Supreme Court on certiorari?

Held. No. Sec 3, Art IX-C, 1987 Constitution provides that "The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*." Conformably to these provisions of the Constitution all election cases, including pre-proclamation controversies, must be decided by the COMELEC in division. Should a party be dissatisfied with the decision, he may file a motion for reconsideration before the COMELEC *en banc*. It is, therefore, the decision, order or ruling of the COMELEC *en banc* that may be brought to the Supreme Court on *certiorari*.

[279] The COMELEC Rules of Procedure classify pre-proclamation cases as Special Cases; hence, the two (2) Divisions of the Commission are vested with the authority to hear and decide these Special Cases.

ENFORCEMENT OF ELECTION LAWS
Art IX-C, Sec 4.

The COMELEC is authorized by the Constitution to supervise or regulate the enjoyment or utilization of the franchises or permits for the operation of media of communication and information.

National Press Club v. COMELEC
GR 132922, 207 SCRA 1 [Apr 21, 1998]

Facts. Petitioners assailed the validity of Section 11 (b), RA 6646[280] on the ground that it abridges the freedom of speech of candidates, and that the suppression of media-based campaign or political propaganda except those appearing in the COMELEC space of the newspapers and on COMELEC time of radio and television broadcasts, would bring about a substantial reduction in the quantity or volume of information concerning candidates and issues in the election thereby curtailing and limiting the right of voters to information and opinion.

Issue. Is Sec 11(b), RA 6646 unconstitutional?

Held. No. The COMELEC is authorized by the Constitution to supervise or regulate the enjoyment or utilization of the franchises or permits for the operation of media of communication and information. The fundamental purpose of such "supervision or regulation" has been spelled out in the Constitution as the ensuring of "equal opportunity, time, and space, and the right to reply," as well as uniform and reasonable rates of charges for the use of such media facilities, in connection with "public information campaigns and forums among candidates." Moreover, Sec 11(b), RA 6646 is in conformity with Article II, Section 26 of the Constitution which provides, "the State shall guarantee *equal access to opportunities for public service* and prohibit political dynasties as may be defined by law.

What the COMELEC is authorized to supervise or regulate is the use by media of information of their franchises or permits, while what Congress (not the COMELEC) prohibits is the sale or donation of print space or air time for political ads.

Telecomm & Broadcast Attorneys of the Phils and GMA v. COMELEC
GR 132922, 289 SCRA 337 [Apr 21, 1998]

Facts. Petitioner Telecommunications and Broadcast Attorneys of the Philippines, Inc. is an organization of lawyers of radio and television broadcasting companies. The other petitioner, GMA Network, Inc., operates radio and television broadcasting stations throughout the Philippines under a franchise granted by Congress. Petitioners challenged the validity of Section 92 of the Omnibus election Code[281] on the ground that, among others, it is in excess of the power given to the COMELEC to

[280] RA 6646, Sec 11(b). *Prohibited Forms of Election Propaganda.* – xxx it shall be unlawful: xxx" (b) for any newspaper, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcement or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period."

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RA 6646, Sec 90. *COMELEC space.* The Commission *shall procure space* in at least one newspaper of general circulation in every province or city: *Provided, however,* That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as "COMELEC Space" wherein candidates can announce their candidacy. Said space shall be *allocated, free of charge, equally* and *impartially* by the Commission *among all candidates* within the area in which the newspaper is circulated.

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RA 6646, Sec. 92. *COMELEC time.* The Commission *shall procure radio and television time* to be known as "COMELEC Time" which shall be *allocated equally* and *impartially* among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchise of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of the campaign. (Emphasis supplied)

[281] BP 881. Sec 92. *Comelec Time*. The Commission shall procure radio and television time to be known as "Comelec Time" which shall be allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchise of all radio broadcasting and television station are hereby amended so as to provide radio television time, free of charge, during the period of the campaign.

supervise or regulate the operation of media of communication or information during the period of election. Petitioners argued that the power to supervise or regulate given to the COMELEC under Art. IX-C, Sec 4 of the Constitution does not include the power to prohibit.

Issue. Does COMELEC actually prohibit the operation of media communication during election period in excess of its power to only supervise the same?

Held. No. What the COMELEC is authorized to supervise or regulate by Art. IX-C, Sec. 4 of the Constitution, among other things, is the use by media of information of their franchises or permits, while what Congress (not the COMELEC) prohibits is the sale or donation of print space or air time for political ads. In other words, the object of supervision or regulation is different from the object of the prohibition. In the second place, the prohibition in Sec. 11(b) of R.A. No. 6646 is only half of the regulatory provision in the statute. The other half is the mandate to the COMELEC to procure print space and air time for allocation to candidates. The term political "ad ban" when used to describe Sec. 11(b) of R.A. No. 6646, is misleading, for even as Sec. 11(b) prohibits the sale or donation of print space and air time to political candidates, it mandates the COMELEC to procure and itself allocate to the candidates space and time in the media. There is no suppression of political ads but only a regulation of the time and manner of advertising.[282]

The constitutional objective to give a rich candidate and a poor candidate equal opportunity to inform the electorate as regards their candidacies, mandated by Art IX-C, Sec 4 of the Constitution, is not impaired by posting decals and stickers on cars and other private vehicles.

Adiong v. COMELEC

GR 103956, 207 SCRA 712 [Mar 31, 1992]

Facts. COMELEC promulgated Resolution No. 2347, Sec 21(f).[283] Petitioner *Adiong*, a senatorial candidate, challenged the Resolution insofar as it prohibits the posting of decals and stickers in "mobile" places like cars and other moving vehicles. Adiong argued that the prohibition is violative of Section 82 of the Omnibus Election Code[284] and Section 11(a) of Republic Act No. 6646.[285] In addition, the petitioner believed that with the ban on radio, television and print political advertisements, he, being a neophyte in the field of politics stands to suffer grave and irreparable injury with this prohibition. The posting of decals and stickers on cars and other moving vehicles would be his last medium to inform the electorate that he is a senatorial candidate.

Issue. Is Sec 21(f), COMELEC Resolution No. 2347 unconstitutional?

Held. Yes. First, the prohibition unduly infringes on the citizen's fundamental right of free speech enshrined in the Constitution (Sec. 4, Article III). There is no public interest substantial enough to warrant the kind of restriction involved in this case. Second, the questioned prohibition premised on the statute and as couched in the resolution is void for overbreadth since the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property.[286] Third, the constitutional objective to give a rich candidate and a poor candidate equal opportunity to inform the electorate as regards their candidacies, mandated by Article II, Section 26 and Article XIII, section 1 in relation to Article IX (c) Section 4 of the Constitution, is not impaired by posting decals and stickers on cars and other private vehicles. Compared to the paramount interest of the State in guaranteeing freedom of expression, any financial considerations behind the regulation are of marginal significance.

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[282] Osmena v. COMELEC. G.R. No. 132231, 31 Mar 1998.

[283] COMELEC Resolution No. 2347, Sec 21(f). Prohibited forms of election propaganda. It is unlawful: xxx xxx xxx

(f) To draw, paint, inscribe, post, display or publicly exhibit any election propaganda in any place, whether public or private, mobile or stationary, except in the COMELEC common posted areas and/or billboards, at the campaign headquarters of the candidate or political party, organization or coalition, or at the candidate's own residential house or one of his residential houses, if he has more than one: *Provided, that such posters or election propaganda shall not exceed two (2) feet by three (3) feet in size*. Emphasis supplied.

[284] BP 881, Sec 82. *Lawful election propaganda*. Lawful election propaganda shall include:
(a) Pamphlets, leaflets, cards, decals, stickers or other written or printed materials of a size not more than eight and one-half inches in width and fourteen inches in length;

[285] *Supra*.

[286] A statute is considered void for overbreadth when "it offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." (Zwickler v. Koota, 19 L ed 2d 444 [1967])

COMELEC has not been granted the right to supervise and regulate the exercise by media practitioners themselves of their right to expression during plebiscite periods. Such media practitioners are neither the franchise holders nor the candidates.

Sanidad v. COMELEC
GR 90878, 181 SCRA 529 [Jan 29, 1990]

Facts. The plebiscite for the ratification of RA No. 6766, entitled "An Act providing for an Organic Act for the Cordillera Autonomous Region" was to be conducted. Accordingly, COMELEC promulgated Resolution No. 2167 to govern the conduct of the plebiscite. Sec 19 of the Resolution prohibited columnists, commentators or announcers from using his column or radio/TV time to campaign for or against the plebiscite issues during the plebiscite campaign period on the day before and on plebiscite day. Petitioner *Sanidad*, a newspaper columnist for the Baguio Midland Courier, assailed the constitutionality of said Section. Sanidad alleged that said provision violates the constitutional guarantees of the freedom of expression and of the press enshrined in the Constitution.

Issue. Is Sec 19, COMELEC Resolution No. 2167 a valid implementation of the power of the COMELEC to supervise and regulate media during election or plebiscite periods?

Held. No. Neither Article IX-C of the Constitution nor Section 11 (b), 2nd par. of R.A. 6646 can be construed to mean that the Comelec has also been granted the right to supervise and regulate the exercise by *media practitioners themselves* of their right to expression during plebiscite periods. Media practitioners exercising their freedom of expression during plebiscite periods are neither the franchise holders nor the candidates. In fact, there are no candidates involved in a plebiscite. Therefore, Section 19 of COMELEC Resolution No. 2167 has no statutory basis.

COMMISSION ON AUDIT

POWERS AND FUNCTIONS
Art IX-D, Sec 2.

It is the ministerial duty of the Auditor General to approve and pass in audit the voucher and treasury warrant for payment. He has no discretion or authority to disapprove payments upon the ground that the contract was unwise or that the amount stipulated thereon is unreasonable.

Guevara v. Gimenez
No. L-17115, 6 SCRA 813 [Nov 30, 1962]

Facts. Petitioner-lawyer *Guevara* represented before the CFI the Central Bank (CB) Gov. Cuaderno and its Monetary Board in a civil case for damages in the amount of P574,000. The case was dismissed. Prior thereto, Guevara had sent to the CB his bill for his retainer's fee of P10,000. The Bank Auditor sought advise thereon from the Auditor General. The Auditor General stated that he would not object to said retainer's fees of P10,000, provided that its payment was made xxx in installments. However, the Auditor General expressed his belief that the P300.00 per diem was "excessive xxx". Hence, the present action for mandamus filed by Guevara to compel respondent to approve payment of his retainer's fee of P10,000 and his per diem aggregating P3,300, for the eleven (11) hearings attended by him.[287] It was urged by respondents that the proper remedy for petitioner herein is to appeal from the action of respondents herein, not to seek a writ of mandamus against them.

Issue. May the Auditor General disapprove any payment on the ground that it is excessive?

Held. No. It is well-settled that when a contract has been made by an agency of the Government, the Auditor General or his representative has the duty, enforceable by mandamus to approve and pass in audit the voucher for said disbursements if issued by the proper officer of said agency of the Government. Such function is limited to a determination of whether there is a law appropriating funds for a given purpose; whether a contract, made by the proper officer, has been entered into in conformity with said appropriation law; whether the goods or services covered by said contract have been delivered or rendered in pursuance of the provisions thereof, as attested to by the proper officer; and whether payment therefor has been

[287] Guevara's professional fee amounts to P10,000 as his retainer's fee, plus a per diem of P300 for every hearing or trial.

authorized by the officials of the corresponding department or bureau. If these requirements have been fulfilled, it is the ministerial duty of the Auditor General to approve and pass in audit the voucher and treasury warrant for said payment. He has no discretion or authority to disapprove said payment upon the ground that the aforementioned contract was unwise or that the amount stipulated thereon is unreasonable.[288]

The COA, both under the 1973 and 1987 Constitution, is a collegial body. It must resolve cases presented to it as such.

Orocio v. Commission on Audit
GR 75959, 213 SCRA 109 [Aug 31, 1992]

Facts. An accident occurred at the Malaya Thermal Plant of the National Power Corporation (NPC). When the plug from the leaking tube gave way, steam and hot water flowing therein immediately hit two (2) of the employees working on the tube leak. One of those injured was Orocio, an employee of O.P. Landrito's General Services (OPLGS), a janitorial contractor of the NPC. He suffered 1st and 2nd degree burns. His total hospitalization expenses for the treatment reached P53,802.26. The NPC advanced this amount by setting it up as an account receivable from OPLGS deducted from the latter's billings against NPC until the same was fully satisfied. Subsequently, OPLGS requested for a refund of the total amount deducted from their billings representing payment of the advances made by the NPC. Petitioner Orocio, then Legal Services Chief Director of the NPC, recommended favorable action on OPLGS' request. Thereupon, the amount for the hospitalization expenses was refunded to OPLGS. Respondent Agustin, however, Unit Auditor of the Commission on Audit (COA) assigned to the NPC, in a memorandum, disallowed NPC's questioned disbursement in favor of OPLGS on the ground that there is no employer-employee relationship between the Corporation and the OPLGS's employees. General Counsel Ilao of the NPC asked for a reconsideration of the disallowance. Augustin denied the motion for reconsideration. Augustin's memorandum affirming his decision was subsequently indorsed by the following: 1st indorsement by Agustin to the Chairman of COA; 2nd indorsement by respondent Ursal, Manager of the Corporate Audit Office of respondent COA; 3rd indorsement by respondent Segarra, Corporate Auditor of COA; 4th indorsement of respondent Ursal; and 5th indorsement of the COA General Counsel Ricardo Nepomuceno. In his 5th indorsement, Nepomuceno acting "FOR THE COMMISSION", expressed his concurrence with the view of unit Auditor Agustin. Hence, a Debit Memorandum was issued in the name of Orocio debiting his account with the NPC for the amount of the hospitalization expenses "upon whose legal opinion the payment of the aforesaid refund was made possible xxx".[289]

Issue. May the COA's General Counsel act in behalf of the Commission?

Held. No. The COA, both under the 1973 and 1987 Constitution, is a collegial body. It must resolve cases presented to it as such. Its General Counsel cannot act for the Commission for he is not even a Commissioner thereof. He can only offer legal advice or render an opinion in order to aid the COA in the resolution of a case or a legal question. Thus, Nepomuceno's 5th indorsement cannot be considered as a "decision" of the COA. If the same were to be so considered, it would be void *ab initio* for having been rendered by one who is not possessed with any power or authority. What Mr. Nepomuceno should have done was to render the opinion precisely sought for in the preceding 4th indorsement of respondent Ursal, and submit the same to the Commission for the latter's guidance in resolving the issu. Respondent Agustin, therefore, acted prematurely and with undue haste in implementing the disallowance against the parties allegedly liable therefor on the basis of the favorable opinion of Mr. Nepomuceno who, incidentally, merely concurred with his (Agustin's) indorsement.

A compromise of a civil suit in which a city govt is involved as a party, is a perfectly legitimate transaction, not only recognized but even encouraged by law.

Osmeña v. Commision on Audit
GR 98355, 238 SCRA 463 [Mar 2, 1994]

[288] However, Guevara already collected P6,000 from CB. Hence he was only entitled to P7,300 as compensation.

[289] PD No. 1445 (otherwise known as Government Auditing Code), Sec 103. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Facts. On 6 Sept 1985, Reynaldo de la Cerna was stabbed by an unknown assailant. He was rushed to the Cebu City Medical Center, but unfortunately died. His parents claimed that Reynaldo would not have died were it not for the "ineptitude, gross negligence, irresponsibility, stupidity and incompetence of the medical staff" of the Medical Center. The de la Cerna Spouses accordingly instituted in the RTC a civil action, for recovery of damages. The City of Cebu was among the defendants. The parties agreed to an amicable settlement. The compromise agreement included a provision for the payment of the sum of P30,000.00 to the plaintiffs by City of Cebu. The agreement was submitted to the *Sangguniang Panlungsod* of the City, which it ratified, and subsequently authorized "the City Budget Officer, Cebu City, to include in Supplemental Budget No. IV of the City . . . for the year 1989 the amount of P30,000.00 *for financial assistance to the parents of the late Reynaldo de la Cerna xxx*." The agreement was also submitted to the RTC, which rendered a judgment "finding the agreement to be in conformity with law, morals and public policy" and enjoining the parties to comply strictly with the terms and conditions thereof. About 11 months later, however, respondent COA, in its 3rd indorsement, disallowed the "financial assistance" thus granted. COA's decision maintained the view that xxx it is not within the powers of the *Sangguniang Panlungsod* of Cebu to provide, either under the general welfare clause or even on humanitarian grounds, monetary assistance that would promote the economic condition and private interests of certain individuals only xxx. Hence, this petition commenced by the City of Cebu, through its Mayor, Tomas Osmena.

Issue. May COA disallow the compromise agreement executed between the City of Cebu and de la Cerna spouses?

Held. No. The participation by the City in negotiations for an amicable settlement of a pending litigation and its eventual execution of a compromise relative thereto, are indubitably within its authority and capacity as a public corporation; and a compromise of a civil suit in which it is involved as a party, is a perfectly legitimate transaction, not only recognized but even encouraged by law.[290]

[290] A compromise is a bilateral act or transaction that it expressly acknowledged as a juridical agreement by the Civil Code and is therein dealt with in some detail. "A compromise," declares Article 2208 of the Civil Code, "is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."

The COA adheres to the policy that government funds and property should be fully protected and conserved and that irregular, unnecessary, excessive or extravagant expenditures or uses of such funds and property should be prevented.

Sambeli v. Province of Isabela

GR 92276, 210 SCRA 80 [June 26, 1992]

Facts. An agreement was entered into by and between the *Province of Isabela* and ECS Enterprises, owned by petitioner Edmundo *Sambeli*, for the purchase of wheelbarrows, shovels and radio communication equipment. After a partial delivery, the Provincial Auditor allowed the payment of only 50% of the delivery made "pending receipt of the reply to the query to the Price Evaluation Division, Commission on Audit (COA), Technical Staff Office, Quezon City." After the second delivery, another payment of 50% of the price thereof was allowed by the Provincial Auditor, bringing the total payments made to 50% of the total cost of the two deliveries. Meanwhile, the Price Evaluation Division, COA Technical Service Office, the Provincial Auditor found that there has been overpricing and, hence, there has been an overpayment. Sambeli then proposed a 10% deduction on the unpaid balance. The Provincial Auditor decided that "a refund of [the amount equivalent to the overpayment] must be made by the supplier xxx", and the COA Regional Director affirmed. Hence this petition.

Issue. May COA disallow the contract executed between ECS Enterprises and the Province of Isabela notwithstanding the perfection of the contract of sale, the delivery made by ECS and the partial payment made by the province of Isabela?

Held. Yes. In the exercise of the regulatory power vested upon it by the Constitution, the COA adheres to the policy that government funds and property should be fully protected and conserved and that irregular, unnecessary, excessive or extravagant expenditures or uses of such funds and property should be prevented. On the proposition that improper or wasteful spending of public funds or immoral use of government property, for being highly irregular or unnecessary, or scandalously excessive or extravagant, offends the sovereign people's will, it behooves the COA to

put a stop thereto. That authority extends to the accounts of all persons respecting funds or properties received or held by them in any accountable capacity.[291] In the exercise of its jurisdiction, it determines whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged[292], and whether or not there has been loss or wastage of government resources. It is also empowered to review and evaluate contracts.[293]

COA may disallow release of transportation allowance of an employee of a government-owned and controlled corporation.

Bustamante v. Commission on Audit
GR 103309, 216 SCRA 134 [Nov 27, 1992]

Facts. Petitioner *Bustamante* was the Regional Legal Counsel of the National Power Corporation (NPC) for the Northern Luzon Regional Center. He was issued a government vehicle and transportation allowance pursuant to NPC policy. The *COA* disallowed the release of his transportation allowance. Bustamante appealed to COA, but was denied. Hence, this petition.

Issue. Did COA commit grave abuse of discretion when it denied due course to Bustamante's appeal?

Held. No. It is beyond dispute that the discretion exercised in the denial of the appeal is within the power of the Commission on Audit pursuant to 1987 Constitution, Art IX-D, Sec 2(1-2),[294] and COA Circular No. 75-6.[295] Moreover, the view suggested by Bustamante that the COA, in the exercise of its power granted by the Constitution, usurped the statutory functions of the NPC Board of Directors, which includes the power to formulate and adopt policies and measures for the management and operation of the NPC pursuant to its Charter (R.A. 6395), cannot be sustained for its leads to the absurd conclusion that a mere Board of Directors of a government-owned and controlled corporation, by issuing a resolution, can put to naught a constitutional provision. This Constitutional Body is tasked to be

[291] PD 1445, Sec 26. *General jurisdiction*. The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

[292] *Ibid.* Sec 2(1). *Statement of objectives*. In keeping with its Constitutional mandate, the Commission adheres to the following primary objectives: 1. To determine whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged xxx.

[293] *Ibid*. Sec 18(4). *The Technical Service Office.* The Technical Service Office shall perform the following functions; xxx 4. Review and evaluate contracts, and inspect and appraise infrastructure projects xxx.

[294] 1987 Constitution, Art IX-D, Sec. 2.

xxx xxx xxx

(1) The Commission on Audit shall have the power, authority and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by or pertaining to, the government, or any of the its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity

xxx xxx xxx

(2) The Commission shall have exclusive authority, subject to the limitations in the Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

[295] COA Circular No. 75-6 dated 7 November1975. VI. *Prohibition Against Use of Government Vehicles by Officials provided with transportation allowance*. No official which has been furnished motor transportation allowance by any government corporations or other office shall be allowed to use mother vehicle transportation operated and maintained from funds appropriated in the abovecited Decree. (Sec. 14, P.D. 733)

vigilant and conscientious in safeguarding the proper use of the government's, and ultimately, the people's property.

The Supreme Court's power to review COA decisions refers to money matters and not to administrative cases involving the discipline of its personnel.

Saligumba v. Commission on Audit
No. L-61676, 117 SCRA 669 [Oct 18, 1982]

Facts. On the basis of the sworn complaint of *Saligumba*, the *COA* instituted an administrative case against Estella, Auditing Examiner III, in the Auditor's Office of Misamis Occidental. The charge was that the respondent raped Saligumba on several occasions. The COA dismissed the complaint on the ground of insufficiency of evidence. Hence, this petition for review.

Issue. May the Supreme Court review this case which is an administrative matter?

Held. No. *The Supreme Court's power to review COA decisions refers to money matters and not to administrative cases involving the discipline of its personnel*. Even assuming that the Supreme Court has jurisdiction to review decisions on administrative matters, it cannot do so on factual issues; the Supreme Court's power to review is limited to legal issues.

PROHIBITED EXEMPTIONS
Art IX-D, Sec 3.

When reasons far outweigh the policy of giving preference to government sources in the filling of the needs of the government for supplies, the former must be sustained.

Philippine Airlines (PAL) v. Commission on Audit
GR 91890, 245 SCRA 39 [June 9, 1995]

Facts. At the time of the filing of the petition, majority of Philippine Airlines '(*PAL's)* shares of stock was owned by the Government Service Insurance System (GSIS), a government corporation. To assure itself of continuous, reliable and cost-efficient supply of fuel, PAL adopted a system of bidding out its fuel requirements under a multiple supplier set-up whereby PAL awarded to the lowest bidder 60% of its fuel requirements and to the second lowest bidder the remaining 40%, provided it matched the price of the lowest bidder. In lieu of the upcoming expiration of PAL's international fuel supply contracts, COA advised PAL to desist from bidding the company's fuel supply contracts considering that existing regulations (Dept. Order No. 19 of the defunct Dept. of General Service) require government-owned or controlled corporations to procure their petroleum product requirements from PETRON Corp.

Issue. Did COA commit grave abuse of discretion in holding that Dept Order No. 19 applies to PAL?

Held. Yes.[296] Although COA was correct in ruling that Dept Order No. 19 applied to PAL as a government agency at the time, it nonetheless gravely abused its discretion in not exempting PAL therefrom. The reasons given by PAL for seeking exemption from the operation of Department Order No. 19 were meritorious. They far outweigh the policy enunciated in Dept Order No. 19 of giving preference to government sources in the filling of the needs of the government for supplies. One reason was that the *multiple supplier* system of bidding gave the best and lowest prices. The system was designed precisely to meet every contingency that might disrupt PAL's fuel supply. Another reason given by PAL was that relying on a single fuel supplier would put into jeopardy the regularity of its services, as there were possible contingencies not within PETRON's control which could cause a disruption of fuel supply. As a business operation heavily dependent on fuel supply, for PAL to rely solely on a single supplier would indeed be impracticable.

The interpretation of an agency of its own rules should be given more weight than the interpretation by that agency of the law merely tasked to administer it.

Bagatsing v. Committee on Privatization
GR 112399, 246 SCRA 334 [July 14, 1995]

[296] The question raised in this petition has become moot and academic. PAL's shares of stock were bidded out early this year (1995), resulting in the acquisition by PR Holdings, a private corporation, of 67% PAL's outstanding stocks. PAL having ceased to be a government-owned or controlled corporation, is no longer under the audit jurisdiction of the COA.

Facts. Pursuant to the government's privatization program launched by the Aquino administration, Pres. Ramos approved the privatization of PETRON. There were three interested offerors to the bidding: Petroliam Nasional Berhad (PETRONAS), ARAMCO and WESTMONT. The PNOC Board of Directors rejected the bid of WESTMONT for not having met the pre-qualification criteria before even opening the bids. PETRONAS was also later disqualified for submitting a bid below the floor price. ARAMCO qualified and submitted a bid above floor price. They were thus declared the winning bidder. Petitioners now claim there is a failure in bidding in view of Circular No. 89-296 of the Commission on Audit (COA) which provides that "there is failure of bidding" when: (1) there is only one offeror; or (2) when all the offers are non-complying or unacceptable"

Issue. Was there a failure in the bidding process for having only one offeror?

Held. No. In the instant the case, there were 3 offerors. While two offerors were disqualified, not all the offerors were disqualified. To constitute a failed bidding under the COA Circular, all the offerors must be disqualified. Petitioners urge that in effect there was only one bidder and that it cannot be said that there was a competition on "an equal footing." But the COA Circular does not speak of accepted bids but of offerors, without distinction as to whether they were disqualified. The COA itself, the agency that adopted the rules on bidding procedure to be followed by government offices and corporations, had upheld the validity and legality of the questioned bidding. The interpretation of an agency of its own rules should be given more weight than the interpretation by that agency of the law it is merely tasked to administer.

Art X, Sec 8.

In order that an official will be barred from serving for more than three consecutive terms, the three consecutive terms he has served must be one for which he was elected.

Borja, Jr. v. COMELEC
GR 133495, 295 SCRA 157 [Sept 3, 1998]

Facts. Respondent *Capco* was elected vice-mayor of Pateros in Jan 1988. In Sept 1989, incumbent Mayor Cesar Borja died and Capco. became Mayor by operation of law. For the next two succeeding elections in 1992 and 1995, he was re-elected as Mayor. Capco sought to run for Mayor again in the 1998 elections. Petitioner *Borja, Jr.*, who was also a candidate for the same office, sought Capco's disqualification on the theory that the latter would have already served as mayor for three consecutive terms by 30 June 1998 and would therefore be ineligible to serve for another term after that. The COMELEC's Second Division ruled in favor of Borja, Jr. and declared Capco disqualified from running. Upon motion for reconsideration by Capco, the majority reversed the decision of COMELEC's Second Division. Hence, this petition.

Issue. Has Capco served three consecutive terms as Mayor of Pateros in contravention of 1987 Constitution, Art X, Sec 8?[297]

Held. No. Art X, Sec 8 of the Constitution contemplates service by local officials for three consecutive terms as a result of election. The first sentence speaks of "the term of office of elective local officials" and bars "such officials" from serving for more than three consecutive terms. The second sentence, in explaining when an elective local official may be deemed to have served his full term of office, states that "voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." The term served must therefore be one "for which [the official concerned] was elected." The purpose of this provision is to prevent a circumvention of the limitation on the number of terms an elective official may serve. Conversely, if he is not serving a term for which he was elected because he is simply continuing the service of the official he succeeds, such official cannot be considered to have fully served the term now withstanding his voluntary renunciation of office prior to its expiration.

[297] 1987 Constitution, Art X, Sec 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

APPENDIX A
THE INITIATIVE AND REFERENDUM ACT

REPUBLIC ACT NO. 6735

AN ACT PROVIDING FOR A SYSTEM OF INITIATIVE AND REFERENDUM AND APPROPRIATING FUNDS THEREFOR

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

I.- General Provisions

SECTION 1. *Title.*-This act shall be known as "The Initiative and Referendum Act".

SEC. 2. *Statement of Policy.*-The power of the people under a system of initiative and referendum to directly propose, enact, approve or reject, in whole or in part, the Constitution, laws, ordinances, or resolutions passed by any legislative body upon compliance with the requirements of this Act is hereby affirmed, recognized and guaranteed.

SEC. 3. *Definition of Terms*.-For purposes of this Act, the following terms shall mean:

a. "Initiative" is the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose.
   There are three (3) systems of initiative, namely:
   a.1 Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;
   a.2 Initiative on statutes which refers to a petition proposing to enact a national legislation; and
   a.3 Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance.
b. "Indirect initiative" is exercise of initiative by the people through a proposition sent to Congress or the local legislative body for action.
c. "Referendum" is the power of the electorate to approve or reject a legislation through an election called for the purpose. It may be of two classes, namely:
   c.1 Referendum on statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress; and
   c.2 Referendum on local law which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies.
d. "Proposition" is the measure proposed by the voters.
e. "Plebiscite" is the electoral process by which an initiative on the Constitution is approved or rejected by the people.
f. "Petition" is the written instrument containing the proposition and the required number of signatories. It shall be in a form to be determined by and submitted to the Commission on Elections, hereinafter referred to as the Commission.
g. "Local government units" refers to provinces, cities, municipalities and barangays.
h. "Local legislative bodies" refers to the Sangguniang Panlalawigan, Sangguniang Panglungsod, Sangguniang Bayan, and Sangguniang Nayon.
i. "Local executives" refers to the Provincial Governors, City or Municipal Mayors and Punong Barangay as the case may be.

SEC. 4. *Who May Exercise*.-The power of initiative and referendum may be exercised by all registered voters of the country, autonomous regions, provinces, cities, municipalities and barangays.

SEC. 5. *Requirements*

a. To exercise the power of initiative or referendum, at least ten per centum (10%) of the total number of the registered voters, of which every legislative district is represented by at least three *per centum* (3%) of the registered voters thereof, shall sign a petition for the purpose and register the same with the Commission.
b. A petition for an initiative on the 1987 Constitution must have at least twelve per centum (12%) of the total number of registered voters as signatories, of which every legislative district, must be represented by at least three *per centum* (3%) of the registered voters therein. Initiative on the Constitution may be exercised only after five (5) years from the

ratification of the 1987 Constitution and only once every five (5) years thereafter.

c. The petition shall state the following:
   c.1 contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be;
   c.2 the proposition;
   c.3 the reason or reasons therefor;
   c.4 that it is not one of the exceptions provided herein;
   c.5 signatures of the petitioners or registered voters; and
   c.6 an abstract or summary proposition in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition.
d. A referendum or initiative affecting a law, resolution or ordinance passed by the legislative assembly of an autonomous region, province or city is deemed validly initiated if the petition therefor is signed by at least ten per centum (10%) of the registered voters in the province or city, of which every legislative district must be represented by at least three *per centum* (3%) of the registered voters therein: *Provided*, however, That if the province or city is composed only of one legislative district, then at least each municipality in a province or each barangay in a city should be represented by at least three *per centum* (3%) of the registered voters therein.
e. A referendum or initiative on an ordinance passed in a municipality shall be deemed validly initiated if the petition therefor is signed by at least ten *per centum* (10%) of the registered voters in the municipality, of which every barangay is represented by at least three *per centum* (3%) of the registered voters therein.
f. A referendum or initiative on a barangay resolution or ordinance is deemed validly initiated if signed by at least ten per centum (10%) of the registered voters in said barangay.

SEC. 6. *Special Registration.*-The Commission on Elections shall set a special registration day at least three (3) weeks before a scheduled initiative or referendum.

SEC. 7. *Verification of Signatures.*-The Election Registrar shall verify the signatures on the basis of the registry list of voters, voters' affidavits and voters' identification cards used in the immediately preceding election.

II.-National Initiative and Referendum

SEC. 8. *Conduct and Date of Initiative or Referendum*.-The Commission shall call and supervise the conduct of initiative or referendum.

Within a period of thirty (30) days from receipt of the petition, the Commission shall, upon determining the sufficiency of the petition, publish the same in Filipino and English at least twice in newspapers of general and local circulation and set the date of the initiative or referendum which shall not be earlier than forty-five (45) days but not later than ninety (90) days from the determination by the Commission of the sufficiency of the petition.

SEC. 9. *Effectivity of Initiative or Referendum Proposition.*-

a. The proposition for the enactment, approval, amendment or rejection of a national law shall be submitted to and approved by a majority of the votes cast by all the registered voters of the Philippines.

   If, as certified to by the Commission, the proposition is approved by a majority of the votes cast, the national law proposed for enactment, approval, or amendment shall become effective fifteen (15) days following completion of its publication in the Official Gazette or in a newspaper of general circulation in the Philippines. lf, as certified by the Commission, the proposition to reject a national law is approved by a majority of the votes cast, the said national law shall be deemed repealed and the repeal shall become effective fifteen (15) days following the completion of publication of the proposition and the certification by the Commission in the Official Gazette or in a newspaper of general circulation in the Philippines.

   However, if the majority vote is not obtained, the national law sought to be rejected or amended shall remain in full force and effect.
b. The proposition in an initiative on the Constitution approved by a majority of the votes cast in the plebiscite shall become effective as to the day of the plebiscite.
c. A national or local initiative proposition approved by majority of the votes cast in an election called for the purpose shall become effective fifteen (15) days after certification and proclamation by the Commission.

SEC. 10. *Prohibited Measures*.-The following cannot be the subject of an initiative or referendum petition:

a. No petition embracing more than one subject shall be submitted to the electorate; and

b. Statutes involving emergency measures, the enactment of which are specifically vested in Congress by the Constitution, cannot be subject to referendum until ninety (90) days after its effectivity.

SEC. 11. *Indirect Initiative*.-Any duly accredited people's organization, as defined by law, may file a petition for indirect initiative with the House of Representatives, and other legislative bodies.Â The petition shall contain a summary of the chief purposes and contents of the bill that the organization proposes to be enacted into law by the legislature.

The procedure to be followed on the initiative bill shall be the same as the enactment of any legislative measure before the House of Representatives except that the said initiative bill shall have precedence over other pending legislative measures on the committee.

SEC. 12. *Appeal*.-The decision of the Commission on the findings of the sufficiency or insufficiency of the petition for initiative or referendum may be appealed to the Supreme Court within thirty (30) days from notice thereof.

III.-Local Initiative and Referendum

SEC. 13. *Procedure in Local Initiative*.

a. Not less than two thousand (2,000) registered voters in case of autonomous regions one thousand (1,000) in case of provinces and cities, one hundred (100) in case of municipalities, and fifty (50) in case of barangays, may file a petition with the Regional Assembly or local legislative body, respectively, proposing the adoption, enactment, repeal, or amendment, of any law, ordinance or resolution.
b. If no favorable action thereon is made by local legislative body within thirty (30) days from its presentation, the proponents through their duly authorized and registered representative may invoke their power of initiative, giving notice thereof to the local legislative body concerned.
c. The proposition shall be numbered serially starting from one (1). The Secretary of Local Government or his designated representative shall extend assistance in the formulation of the proposition.
d. Two or more propositions may be submitted in an initiative.
e. Proponents shall have one hundred twenty (120) days in case of autonomous regions, ninety (90) days in case of provinces and cities, sixty (60) days in case of municipalities, and thirty (30) days in case of barangays, from notice mentioned in subsection (b) hereof to collect the required number of signatures.
f. The petition shall be signed before the Election Registrar, or his designated representatives, in the presence of a representative of the proponent, and a representative of the regional assemblies and local legislative bodies concerned in a public place in the autonomous region or local government unit, as the case may be. Signature stations may be established in as many places as may be warranted.
g. Upon the lapse of the period herein provided, the Commission on Elections, through its office in the local government unit concerned shall certify as to whether or not the required number of signatures has been obtained. Failure to obtain the required number is a defeat of the proposition.
h. If the required number of signatures is obtained, the Commission shall then set a date for the initiative at which the proposition shall be submitted to the registered voters in the local government unit concerned for their approval within ninety (90) days from the date of certification by the Commission, as provided in subsection (g) hereof, in case of autonomous regions, sixty (60) days in case of provinces and cities, forty-five (45) days in case of municipalities, and thirty (30) days in case of barangays. The initiative shall then be held on the date set, after which the results thereof shall be certified and proclaimed by the Commission on Elections.

SEC. 14. *Effectivity of Local Propositions.*-If the proposition is approved by a majority of the votes cast, it shall take effect fifteen (15) days after certification by the Commission as if affirmative action thereon had been made by the local legislative body and local executive concerned. If it fails to obtain said number of votes, the proposition is considered defeated.

SEC. 15. *Limitations on Local Initiatives*.

a. The power of local initiative shall not be exercised more than once a year.
b. Initiative shall extend only to subjects or matters which are within the legal powers of the local legislative bodies to enact.
c. If at any time before the initiative is held, the local legislative body shall adopt in toto the proposition presented, the initiative shall be cancelled. However, those against such action may, if they so desire, apply for initiative in the manner herein provided.

SEC. 16. *Limitations Upon Local Legislative Bodies*.-Any proposition or ordinance or resolution approved through the system of initiative and referendum as herein provided shall not be repealed, modified or amended, by the local legislative body concerned within six (6) months from the date therefrom, and may be amended, modified or repealed by the local legislative body within three (3) years thereafter by a vote of three-fourths (3/4) of all its members: *Provided,* however, That in case of barangays the period shall be one (1) year after the expiration of the first six (6) months.

SEC. 17. *Local Referendum*.-Notwithstanding the provision of Section 4 hereof, any local legislative body may submit to the registered voters of autonomous region, provinces, cities, municipalities and barangays for the approval or rejection, any ordinance or resolution duly enacted or approved.

Said referendum shall be held under the control and direction of the Commission within sixty (60) days in case of provinces and cities, forty-five (45) days in case of municipalities and thirty (30) days in case of barangays.

The Commission shall certify and proclaim the results of the said referendum.

SEC. 18. *Authority of Courts.*-Nothing in this Act shall prevent or preclude the proper courts from declaring null and void any proposition approved pursuant to this Act for violation of the Constitution or want of capacity of the local legislative body to enact the said measure.

IV.-Final Provisions

SEC. 19. *Applicability of the Omnibus Election Code.*-The Omnibus Election Code and other election laws, not inconsistent with the provisions of this Act, shall apply to all initiatives and *referenda.*

SEC. 20. *Rules and Regulations.* – The Commission is hereby empowered to promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

SEC. 21. *Appropriations.* – The amount necessary to defray the cost of the initial implementation of this Act shall be charged against the Contingent Fund in the General Appropriations Act of the current year. Thereafter, such sums as may be necessary for the full implementation of this Act shall be included in the annual General Appropriations Act.

SEC. 22. *Separability Clause.* – If any part or provision of this Act is held invalid or unconstitutional, the other parts or provisions thereof shall remain valid and effective.

SEC. 23. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Approved,

APPENDIX B
THE PARTY-LIST SYSTEM ACT

REPUBLIC ACT No. 7941

AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. *Title.* This Act shall be known as the "Party-List System Act."

Section 2. *Declaration of policy.* The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadcast possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.

Section 3. *Definition of Terms.*

a. The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections (COMELEC). Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system.
b. A party means either a political party or a sectoral party or a coalition of parties.
c. A political party refers to an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.

   It is a national party when its constituency is spread over the geographical territory of at least a majority of the regions. It is a regional party when its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.
d. A sectoral party refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof whose principal advocacy pertains to the special interest and concerns of their sector,
e. A sectoral organization refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns.
f. A coalition refers to an aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.

Section 4. *Manifestation to Participate in the Party-List System.* Any party, organization, or coalition already registered with the Commission need not register anew. However, such party, organization, or coalition shall file with the Commission, not later than ninety (90) days before the election, a manifestation of its desire to participate in the party-list system.

Section 5. *Registration.* Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: Provided, That the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

The COMELEC shall publish the petition in at least two (2) national newspapers of general circulation.

The COMELEC shall, after due notice and hearing, resolve the petition within fifteen (15) days from the date it was submitted for decision but in no case not later than sixty (60) days before election.

Section 6. *Refusal and/or Cancellation of Registration.* The COMELEC may, motu propio or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

1. It is a religious sect or denomination, organization or association, organized for religious purposes;
2. It advocates violence or unlawful means to seek its goal;
3. It is a foreign party or organization;
4. It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
5. It violates or fails to comply with laws, rules or regulations relating to elections;
6. It declares untruthful statements in its petition;
7. It has ceased to exist for at least one (1) year; or
8. It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

Section 7. *Certified List of Registered Parties.* The COMELEC shall, not later than sixty (60) days before election, prepare a certified list of national, regional, or sectoral parties, organizations or coalitions which have applied or who have manifested their desire to participate under the party-list system and distribute copies thereof to all precincts for posting in the polling places on election day. The names of the part y-list nominees shall not be shown on the certified list.

Section 8. *Nomination of Party-List Representatives.* Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned.

Section 9. *Qualifications of Party-List Nominees.* No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1)year immediately preceding the day of the election, able to read and write, a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term.

Section 10. *Manner of Voting.* Every voter shall be entitled to two (2) votes: the first is a vote for candidate for member of the House of Representatives in his legislative district, and the second, a vote for the party, organizations, or coalition he wants represented in the house of Representatives: Provided, That a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted: Provided, finally, That the first election under the party-list system shall be held in May 1998.

The COMELEC shall undertake the necessary information campaign for purposes of educating the electorate on the matter of the party-list system.

Section 11. *Number of Party-List Representatives.* The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

In determining the allocation of seats for the second vote, the following procedure shall be observed:

a. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
b. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes : Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

Section 12. *Procedure in Allocating Seats for Party-List Representatives.* The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the total nationwide votes cast for the party-list system.

Section 13. *How Party-List Representatives are Chosen.* Party-list representatives shall be proclaimed by the COMELEC based on the list of names submitted by the respective parties, organizations, or coalitions to the COMELEC according to their ranking in said list.

Section 14. *Term of Office.* Party-list representatives shall be elected for a term of three (3) years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election. No party-list representatives shall serve for more than three (3) consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity his service for the full term for which he was elected.

Section 15. *Change of Affiliation; Effect.* Any elected party-list representative who changes his political party or sectoral affiliation during his term of office shall forfeit his seat: Provided, That if he changes his political party or sectoral affiliation within six (6) months before an election, he shall not be eligible for nomination as party-list representative under his new party or organization.

Section 16. *Vacancy.* In case of vacancy in the seats reserved for party-list representatives, the vacancy shall be automatically filled by the next representative from the list of nominees in the order submitted to the COMELEC by the same party, organization, or coalition, who shall serve for the unexpired term. If the list is exhausted, the party, organization coalition concerned shall submit additional nominees.

Section 17. *Rights of Party-List Representatives.* Party-List Representatives shall be entitled to the same salaries and emoluments as regular members of the House of Representatives.

Section 18. *Rules and Regulations.* The COMELEC shall promulgate the necessary rules and regulations as may be necessary to carry out the purposes of this Act.

Section 19. *Appropriations.* The amount necessary for the implementation of this Act shall be provided in the regular appropriations for the Commission on Elections starting fiscal year 1996 under the General Appropriations Act.

Starting 1995, the COMELEC is hereby authorized to utilize savings and other available funds for purposes of its information campaign on the party-list system.

Section 20. *Separability Clause.* If any part of this Act is held invalid or unconstitutional, the other parts or provisions thereof shall remain valid and effective.

Section 21. *Repealing Clause.* All laws, decrees, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed.

Section 22. *Effectivity.* This Act shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Approved, March 3, 1995.

APPENDIX C
SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 1-95

ADMINISTRATIVE CIRCULAR NO. 1-95 December 15, 1995
(REVISED CIRCULAR NO. 1-91)

TO: COURT OF APPEALS, COURT OF TAX APPEALS, THE SOLICITOR GENERAL, THE GOVERNMENT CORPORATE COUNSEL, ALL MEMBERS OF THE GOVERNMENT PROSECUTION SERVICE, AND ALL MEMBERS OF THE INTEGRATED BAR OF THE PHILIPPINES.

SUBJECT: RULES GOVERNING APPEALS TO THE COURT OF APPEALS FROM JUDGMENTS OR FINAL ORDERS OF THE COURT OF TAX APPEALS AND QUASI-JUDICIAL AGENCIES.

1. *SCOPE*. These rules shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of any quasi-judicial agency from which an appeal is authorized to be taken to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunication Commission, Department of Agrarian Reform under Republic Act 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, and Construction Industry Arbitration Commission.

2. *CASES NOT COVERED*. These rules shall not apply to judgments or final orders issued under the Labor Code of the Philippines, by the Central Board of Assessment Appeals, and by other quasi-judicial agencies from which no appeal to the court is prescribed or allowed.

3. *WHERE TO APPEAL*. An appeal under these rules may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

4. *PERIOD OF APPEAL*. The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full a mount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed another period of fifteen (15) days.

5. *HOW APPEAL TAKEN*. Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, a copy of which shall be served on the adverse party and on the court or agency *a quo*. Proof of service of the petition on the adverse party and on the court or agency *a quo* shall be attached to the petition. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

Upon filing the petition for review, the petitioner shall pay to the Clerk of Court of the Court of Appeals the docketing and other lawful fees and deposit the sum of P500.00 for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon verified motion setting forth the grounds relied upon. If the Court denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for cost within fifteen (15) days from notice of the denial.

6. *CONTENTS OF THE PETITION*. The petition for review shall (a) state the full names of the parties to the case, without impleading the lower courts or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record as are referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in

Revised Circular No. 28-91. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

7. *EFFECT OF FAILURE TO COMPLY WITH REQUIREMENTS*. The failure of the petitioner to comply with the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient grounds for the dismissal thereof.

8. *ACTION ON THE PETITION*. The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice. The Court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

9. *CONTENTS OF COMMENT*. The comment shall be filed within ten (10) days from notice in seven (7) legible copies and accompanied by clearly legible certified true copies of such material portions of the record referred to therein together with other supporting papers. The comment shall (a) point out insufficiencies or inaccuracies in petitioner's statement of facts and issues; and (b) state the reasons why the petition should be denied or dismissed. A copy thereof shall be served on the petitioner. If no comment is filed, the Court of Appeals shall act on the appeal on the basis of the petition or the record.

10. *DUE COURSE*. If upon the filing of the comment or such other pleadings or documents as may be required or allowed by the Court of Appeals or upon the expiration of period for the filing thereof, the court finds *prima facie* that the court, commission, board, office or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. The findings of fact of the court, commission, board, office or agency concerned, when supported by substantial evidence, shall be final.

11. *TRANSMITTAL OF RECORD*. Within fifteen (15) days from notice that the petition has been given due course, the Court of Appeals may re-quire the court, commission, board, office, or agency concerned to transmit the original or a legible certified true copy of the entire record of the proceeding under review. The record to be transmitted may be abridged by agreement of all parties to the proceeding. The Court of Appeals may require or permit subsequent correction of or addition to the record.

12. *EFFECT OF APPEAL*. The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

13. *SUBMISSION FOR DECISION*. If the petition is given due course, the Court of Appeals may set the case for oral argument or require the parties to submit memoranda within a period of fifteen (15) days from notice. The case shall be deemed submitted for decision upon the filing of the last pleading or memorandum required by these rules or by the Court itself.

14. *REPEALING CLAUSE*. Rules 43 and 44 of the Rules of Court are hereby repealed and superseded by this Circular.

15. *EFFECTIVITY*. This Circular shall be published in two (2) newspapers of general circulation and shall take effect on February 15, 1995.

(Sgd.) **ANDRES R. NARVASA**
Chief Justice

APPENDIX D
STEP-BY-STEP PROCEDURE
FOR THE ALLOCATION OF PARTY LIST SEATS

STEP ONE: (THE *GUARANTEED SEATS*)

1.1. Rank the party-list candidates according to the number of votes garnered.

1.2. Compute for the percentage of votes garnered by a party-list candidate:

$$\textit{Percentage of votes garnered by a party list candidate} = \frac{\textit{Votes garnered by a party list candidate}}{\textit{Total votes cast for the party list candidates}} \times 100$$

1.3. All party-list candidates garnering two percent (the "*two-percenters*") are given one (1) seat each as "*guaranteed seats.*"

STEP TWO: (THE *REMAINING SEATS*)[298]

2.1. Compute for the *remaining available seats* for allocation:

$$\textit{Remaining available seats} = \textit{maximum seats reserved under the Party List System}^{299} - \textit{guaranteed seats of the "two percenters"}$$

2.2. Compute for a party-list candidate's share in the remaining available seats:

$$\textit{Share of a party list candidate in the remaining seats} = \textit{percentage of votes garnered by a party list candidate} \times \textit{remaining available seats}$$

If the share in the remaining available seats of a party-list candidate is fractional, disregard the fraction and consider only the whole integer.

Where the share in the remaining available seats of a party-list candidate is less than one (1), proceed to allocate remaining seats according to 2.3 hereunder.

2.3. Assign one (1) seat to each of the party-list candidate next in rank until all available seats are completely distributed.

STEP THREE: (*FINAL STEP*)

3.1 Apply the three-seat cap to each party-list candidate.

[298] a.k.a."additional seats"

[299] To compute the number of seats available to party list representatives from the number of seats available to districts representatives (or the maximum seats reserved under the Party List System):

$$\textit{Maximum seats reserved under the Party List System} = \frac{\textit{number of seats available to district reps}}{0.80} \times 0.20$$